By Mr. PATTERSON of North Carolina: A bill (H. R. 19256) granting an increase of pension to Louisa J. Birthright—to the Committee on Pensions.

By Mr. PATTERSON of Tennessee: A bill (H. R. 19257) for the relief of George L. Whitmore—to the Committee on War Claims.

By Mr. RIVES: A bill (H. R. 19258) granting an increase of pension to A. F. McEwen—to the Committee on Invalid Pensions.

By Mr. TALBOTT: A bill (H. R. 19259) for the relief of Nicholas H. Clemson and Rachel Clemson, executors of John D. Clemson, deceased—to the Committee on War Claims.

Also, a bill (H. R. 19260) for the relief of Elizabeth Cramer, administratrix of J. Henry Cramer—to the Committee on War Claims.

Also, a bill (H. R. 19261) for the relief of the heirs of John D. Clemson—to the Committee on War Claims.

By Mr. WELBORN: A bill (H. R. 19262) granting an increase of pension to John Wickline—to the Committee on Invalid Pensions.

By Mr. ZENOR: A bill (H. R. 19263) granting an increase of pension to John Ingram—to the Committee on Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, the following petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. BONYNGE: Petition of citizens of Weed County, Colo., against religious legislation in the District of Columbia—to the Committee on the District of Columbia.

By Mr. BURTON of Ohio: Petition of the National Supply and Machinery Dealers' Association, against adoption of the metric system—to the Committee on Coinage, Weights, and Measures.

By Mr. DEEMER: Petition of H. J. Moore, M. J. Colcord, H. D. Caskey, and the Herald Printing and Publishing Company, to amend the postage laws by making all subscriptions legal whether paid for by subscribers or others—to the Committee on the Post-Office and Post-Roads.

By Mr. DICKSON of Illinois: Petition of citizens of Mount Carmel, Ill., against bill S. 529 (the ship-subsidy bill)—to the Committee on the Merchant Marine and Fisheries.

By Mr. DRESSER: Petitions of J. H. Hayes, master of Grange No. 964; F. M. Dunlap, master of Grange No. 1277; Jeremiah A. Hay, master of Grange No. 757, and N. B. Young, master of Grange No. 1201, for the Heyburn pure-food bill—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Keystone Gazette, for an amendment of the postal laws making legal all subscriptions, by whomever paid for—to the Committee on the Post-Office and Post-Roads.

By Mr. ESCH: Petition of J. D. Eldridge, E. F. Gauz, the Norwalk Star, and the Landsman, to amend the postal laws by making legitimate all subscriptions paid for by others than the recipients of the paper—to the Committee on the Post-Office and Post-Roads.

By Mr. HINSHAW: Paper to accompany bill for relief of Elston Armstrong—to the Committee on Invalid Pensions.

By Mr. HOUSTON: Paper to accompany bill for relief of George E. Johnson—to the Committee on War Claims.

By Mr. WILLIAM W. KITCHIN: Petition of the Southern Mills, Greensboro, N. C., against the tariff on linotype machines—to the Committee on Ways and Means.

By Mr. LE FEVRE: Petition of George W. Kelly et al., for the Crumpacker bill relative to the fraud order—to the Committee on Rules.

By Mr. LINDSAY: Petition of C. E. Redeker, Patriotic Order Sons of America, favoring bill H. R. 18673, favoring restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. MOON of Tennessee: Paper to accompany bill for relief of George White—to the Committee on Invalid Pensions.

By Mr. OLCOTT: Paper to accompany bill for relief of John Bradford—to the Committee on Invalid Pensions.

By Mr. PATTERSON of North Carolina: Paper to accompany bill for relief of Louisa J. O. Birthright—to the Committee on Pensions.

By Mr. SCHNEEBELI: Petition of the Amalgamated Street and Electric Railway Employees of America, Lodge No. 169, of Easton, Pa., against modification of the Chinese-exclusion act—to the Committee on Foreign Affairs.

By Mr. STERLING: Petition of the College Alumni Club and 14 other literary clubs, of Bloomington and Normal, Ill., for preservation of Niagara Falls—to the Committee on Rivers and Harbors.

SENATE.

SATURDAY, *May 12, 1906.*

The Senate met at 11 o'clock a. m.

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. KEAN, and by unanimous consent, the further reading was dispensed with.

The VICE-PRESIDENT. The Journal stands approved.

ESTATE OF ALFRED SWEARINGIN, DECEASED.

The VICE-PRESIDENT. The Chair invites the attention of the Senator from Mississippi [Mr. MONEY]. However, the Senator from Oregon [Mr. FULTON], who objected to the proposed order yesterday, is not now in the Chamber.

Mr. MONEY. Mr. President, I should like to make a statement. I hoped the Senator from Oregon would come in. But that is an order in a case where the bill was sent to the Court of Claims. I know nothing on earth about the case, but the clerk of the Committee on Claims brought down this written order to me and said that it was necessary for me to introduce it, to meet the application of the Court of Claims. They have the bill before them, but the papers were not transmitted when the bill was sent down. This is simply a demand from the committee for the papers, and they can only be sent down on the order of the Senate. The committee discharged itself by sending down the bill, but did not send the papers. I presume if the Senator from Oregon were here he would have no objection to it.

The VICE-PRESIDENT. The Senator from Mississippi does not press the order now?

Mr. MONEY. I do not press it in the absence of the Senator from Oregon.

Mr. KEAN. I do not think the chairman of the committee would object to it, but he did not exactly understand what it was. When he comes in I have no doubt he will withdraw his objection.

Mr. FULTON subsequently entered the Chamber.

Mr. MONEY. I ask now that the order be made I called for yesterday. I have explained it to the Senator from Oregon.

The VICE-PRESIDENT. The Senator from Mississippi asks for the adoption of an order which will be read.

The Secretary read as follows:

Ordered, That the Committee on Claims be discharged from the further consideration of the bill (S. 3355) for the relief of the estate of Alfred Swearingin, deceased, and that the Secretary of the Senate be directed to transmit the papers accompanying the same to the Court of Claims in accordance with the request.

Mr. FULTON. Last evening I objected to the consideration of the order, as I did not then fully understand it. I see now that it refers to papers relative to a case that is pending before the Court of Claims, and I withdraw my objection to the adoption of the order.

The order was agreed to.

LANDS IN NEW MEXICO.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting letters from the Commissioner of the General Land Office, together with the report on the sale of lands in New Mexico, and stating that Congress alone has the power to enforce the conditions of the grant to that Territory; which, with the accompanying papers, was referred to the Committee on Territories, and ordered to be printed.

FINDINGS OF THE COURT OF CLAIMS.

The VICE-PRESIDENT laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting a certified copy of the findings of fact filed by the court in the cause of The Trustees of the Methodist Episcopal Church South, of Oak Bowery, Ala., *v.* The United States; which, with the accompanying paper, was referred to the Committee on Claims, and ordered to be printed.

He also laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting a certified copy of the findings of fact filed by the court in the cause of The Trustees of the John Mann Methodist Church (Colored), of Winchester, Va., *v.* The United States; which, with the accompanying paper, was referred to the Committee on Claims, and ordered to be printed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had passed the bill (S. 5536) granting a pension to William O. Clark.

The message also announced that the House had passed the

following bills, each with an amendment; in which it requested the concurrence of the Senate:

S. 1739. An act granting a pension to Henry Sistrunk; and

S. 5670. An act granting an increase of pension to Isaac L. Duggar.

The message further announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

H. R. 612. An act granting an increase of pension to George W. Kohler;

H. R. 1034. An act granting an increase of pension to John Logan;

H. R. 1178. An act granting an increase of pension to Herman Buckthall;

H. R. 1247. An act granting an increase of pension to Columbus Botts;

H. R. 1420. An act granting a pension to John Nay;

H. R. 1438. An act granting an increase of pension to Oliver T. Smith;

H. R. 1614. An act granting an increase of pension to Jacob H. Lynch;

H. R. 1650. An act granting an increase of pension to Frank B. Watkins;

H. R. 1736. An act granting an increase of pension to Charles A. Walker;

H. R. 1788. An act granting an increase of pension to William D. Christy;

H. R. 2092. An act granting an increase of pension to Franklin M. Hill;

H. R. 2237. An act granting an increase of pension to Martin Pool;

H. R. 2247. An act granting an increase of pension to Anthony Sanspeur;

H. R. 2265. An act granting an increase of pension to Hudson J. Van Scoter;

H. R. 2785. An act granting an increase of pension to Margaret Bonynge;

H. R. 3005. An act granting an increase of pension to Jacob C. Shafer;

H. R. 3222. An act granting an increase of pension to George Merrill;

H. R. 3243. An act granting an increase of pension to John H. Anderson;

H. R. 3351. An act granting an increase of pension to George King;

H. R. 3488. An act granting an increase of pension to Egbert J. Olds;

H. R. 3495. An act granting an increase of pension to Charles F. Tower;

H. R. 3572. An act granting an increase of pension to William L. Riley;

H. R. 3588. An act granting an increase of pension to William H. Riggin;

H. R. 4161. An act granting an increase of pension to Robert Beatty;

H. R. 4241. An act granting an increase of pension to David B. Coleman;

H. R. 4597. An act granting an increase of pension to Martin Ellison;

H. R. 4715. An act granting an increase of pension to John H. Whiting;

H. R. 4956. An act granting an increase of pension to James C. Bryant;

H. R. 5040. An act granting an increase of pension to Joseph Montgomery;

H. R. 5560. An act granting an increase of pension to Henry Chubb;

H. R. 5911. An act granting a pension to Edward D. Lockwood, alias George E. McDaniel;

H. R. 5958. An act granting an increase of pension to Allen L. Garwood;

H. R. 6059. An act granting an increase of pension to Elias Hanes;

H. R. 6190. An act granting an increase of pension to John J. Schneller;

H. R. 6205. An act granting an increase of pension to Lucy E. Engler;

H. R. 6208. An act granting an increase of pension to William D. Conner;

H. R. 6422. An act granting an increase of pension to Anthony Van Slyke;

H. R. 6505. An act granting an increase of pension to Mary C. Chapman;

H. R. 6533. An act granting a pension to Horace Salter;

H. R. 6596. An act granting an increase of pension to Alex. O. Huffman;

H. R. 6774. An act granting an increase of pension to John Platt;

H. R. 6878. An act granting a pension to Lucy Brown;

H. R. 6914. An act granting an increase of pension to John Hecker;

H. R. 7147. An act granting an increase of pension to Bronson Rothrock;

H. R. 7244. An act granting an increase of pension to Christopher S. Guthrie;

H. R. 7402. An act granting an increase of pension to Edwin M. Todd;

H. R. 7535. An act granting an increase of pension to John L. Moore;

H. R. 7589. An act granting an increase of pension to Robert A. Scott;

H. R. 7836. An act granting an increase of pension to Alexander G. Patton;

H. R. 8155. An act granting an increase of pension to Henry E. Seelye;

H. R. 8232. An act granting an increase of pension to James M. Jared;

H. R. 8736. An act granting an increase of pension to Lowell M. Maxham;

H. R. 8795. An act granting an increase of pension to Orrin A. A. Gardner;

H. R. 8817. An act granting an increase of pension to Calvin M. Latham;

H. R. 8852. An act granting an increase of pension to Frederick W. Clark;

H. R. 8867. An act granting an increase of pension to George Stillman;

H. R. 8894. An act granting an increase of pension to James C. Strong;

H. R. 9238. An act for the relief of William Saphar;

H. R. 9243. An act granting an increase of pension to Joseph A. Barnard;

H. R. 9531. An act granting an increase of pension to Eliza Rogers;

H. R. 9609. An act granting an increase of pension to Jesse M. Auchmuty;

H. R. 9828. An act granting an increase of pension to John Broughton;

H. R. 9844. An act granting an increase of pension to John J. Erick;

H. R. 9862. An act granting an increase of pension to William B. Warren;

H. R. 10395. An act granting an increase of pension to Stephen Cundiff;

H. R. 10794. An act granting an increase of pension to Jacob Schultz;

H. R. 10828. An act granting an increase of pension to Michael Lennon;

H. R. 10865. An act granting an increase of pension to Alexander Caldwell;

H. R. 11057. An act granting an increase of pension to Lewis J. Post;

H. R. 11152. An act granting an increase of pension to Theodore S. Currier;

H. R. 11161. An act granting an increase of pension to Michael Aaron;

H. R. 11260. An act granting an increase of pension to James H. Van Camp;

H. R. 11457. An act granting an increase of pension to Cyrus Vanmatre;

H. R. 11855. An act granting an increase of pension to Mary Ann Shelly;

H. R. 12184. An act granting an increase of pension to Joseph Sprauer;

H. R. 12330. An act granting an increase of pension to Hester A. Van Derslice;

H. R. 12336. An act granting an increase of pension to Margaret A. Montgomery;

H. R. 12418. An act granting an increase of pension to Thomas P. Crandall;

H. R. 12879. An act granting an increase of pension to Catharine Myers;

H. R. 12971. An act granting an increase of pension to Matthew H. Brandon;

H. R. 13069. An act granting an increase of pension to Friend S. Esmond;

H. R. 13149. An act granting an increase of pension to Ida L. Martin;

H. R. 13443. An act granting an increase of pension to James E. Hammontree;
H. R. 13594. An act granting an increase of pension to Jonathan Snook;
H. R. 13698. An act granting an increase of pension to Samuel Kelly;
H. R. 13824. An act granting a pension to Noah Myers;
H. R. 13828. An act granting an increase of pension to John M. Carroll;
H. R. 13993. An act granting an increase of pension to Joseph Watson;
H. R. 14264. An act granting an increase of pension to John H. Eversole;
H. R. 14661. An act granting an increase of pension to John B. Bussel;
H. R. 14678. An act granting a pension to James A. Boggs;
H. R. 14702. An act granting an increase of pension to Christian Schlosser;
H. R. 14729. An act granting an increase of pension to David Ford;
H. R. 15056. An act granting an increase of pension to James Ramsey;
H. R. 15104. An act granting an increase of pension to Thomas E. Owens;
H. R. 15126. An act granting an increase of pension to William K. Trabue;
H. R. 15288. An act granting an increase of pension to Benjamin F. Finical;
H. R. 15613. An act granting an increase of pension to William W. Combs;
H. R. 16005. An act granting an increase of pension to Hesekiah J. Reynolds;
H. R. 16073. An act granting an increase of pension to John Ginther;
H. R. 16109. An act granting an increase of pension to Jacob Cline;
H. R. 16188. An act granting a pension to Edward C. Bowers;
H. R. 16252. An act granting an increase of pension to Adam Dixon;
H. R. 16272. An act granting a pension to William D. Willis;
H. R. 16441. An act granting an increase of pension to Joseph J. Goode;
H. R. 16492. An act granting an increase of pension to John M. Logan;
H. R. 16496. An act granting an increase of pension to Thomas Dailey;
H. R. 16525. An act granting an increase of pension to Mary Amanda Nash;
H. R. 16565. An act granting an increase of pension to George H. Gordon, alias Gorton;
H. R. 16595. An act granting a pension to James R. Hicks;
H. R. 16662. An act granting an increase of pension to Van Buren Beam;
H. R. 16682. An act granting an increase of pension to William Hammond;
H. R. 16812. An act granting an increase of pension to Dudley McKibben;
H. R. 16842. An act granting an increase of pension to Thomas H. Thornburgh;
H. R. 16878. An act granting an increase of pension to James B. Adams;
H. R. 16915. An act granting an increase of pension to Orange Bugbee;
H. R. 16918. An act granting a pension to Matilda J. Williams;
H. R. 16977. An act granting an increase of pension to Isabel Newlin;
H. R. 16998. An act granting an increase of pension to Elijah Curtis;
H. R. 17170. An act granting an increase of pension to Jackson D. Turley;
H. R. 17171. An act granting an increase of pension to David H. Parker;
H. R. 17210. An act granting an increase of pension to Daniel M. Vertner;
H. R. 17309. An act granting an increase of pension to John W. Chase;
H. R. 17340. An act granting a pension to Julia Walz;
H. R. 17346. An act granting an increase of pension to Newton S. Davis;
H. R. 17374. An act granting an increase of pension to Isom Wilkerson;
H. R. 17388. An act granting an increase of pension to Patrick McCarthy;
H. R. 17390. An act granting an increase of pension to Mary Sheehan;
H. R. 17445. An act granting an increase of pension to William H. Farrell;
H. R. 17466. An act granting an increase of pension to James P. Hall;
H. R. 17476. An act granting an increase of pension to Henry Ballard;
H. R. 17528. An act granting an increase of pension to Edgar Slater;
H. R. 17542. An act granting an increase of pension to John Cain;
H. R. 17590. An act granting an increase of pension to Jacob Woodruff;
H. R. 17637. An act granting an increase of pension to Gardiner K. Haskell;
H. R. 17772. An act granting an increase of pension to John W. Henry;
H. R. 17825. An act granting an increase of pension to Bolivar Ward;
H. R. 17872. An act granting an increase of pension to Allen D. Metcalfe;
H. R. 17891. An act granting an increase of pension to Eliza M. Buice;
H. R. 17915. An act granting an increase of pension to William W. Dudley;
H. R. 17920. An act granting an increase of pension to Sallie E. Blanding;
H. R. 17922. An act granting an increase of pension to Thomas D. Adams;
H. R. 17934. An act granting an increase of pension to Thomas J. Byrd;
H. R. 17935. An act granting an increase of pension to Andrew C. Woodard;
H. R. 17938. An act granting an increase of pension to Clarissa L. Dowling;
H. R. 17940. An act granting a pension to Rhetta Florence Tilton;
H. R. 17999. An act granting an increase of pension to Samuel Yehl;
H. R. 18034. An act granting a pension to Mary A. Montgomery;
H. R. 18038. An act granting an increase of pension to Erastus W. Briggs;
H. R. 18039. An act granting an increase of pension to John W. Stephens;
H. R. 18041. An act granting an increase of pension to William R. Hiner;
H. R. 18052. An act granting an increase of pension to John Lewis Bernard Breighner;
H. R. 18073. An act granting an increase of pension to Mary McFarlane;
H. R. 18076. An act granting an increase of pension to Elizabeth Bartley;
H. R. 18105. An act granting an increase of pension to John A. Lyle;
H. R. 18106. An act granting an increase of pension to Mary E. Patterson;
H. R. 18116. An act granting an increase of pension to Green Evans;
H. R. 18121. An act granting an increase of pension to John W. Jones;
H. R. 18125. An act granting an increase of pension to Wilhelm Griese;
H. R. 18132. An act granting an increase of pension to John W. Blanchard;
H. R. 18135. An act granting an increase of pension to Benedict Sutter;
H. R. 18165. An act granting an increase of pension to Jacob Stauff;
H. R. 18184. An act granting an increase of pension to John J. Howells;
H. R. 18236. An act granting an increase of pension to Thomas Garratt;
H. R. 18239. An act granting an increase of pension to Bryant Brown;
H. R. 18243. An act granting an increase of pension to Jacob S. Rickard;
H. R. 18249. An act granting an increase of pension to Hiram G. Hunt;
H. R. 18262. An act granting an increase of pension to John H. Broadway;
H. R. 18308. An act granting an increase of pension to Clay Riggs;
H. R. 18310. An act granting an increase of pension to Virgil A. Bayley;

H. R. 18319. An act granting an increase of pension to Newton Kinnison;
H. R. 18355. An act granting an increase of pension to Rachael A. Webster;
H. R. 18356. An act granting an increase of pension to William A. Custer;
H. R. 18357. An act granting an increase of pension to William E. Starr;
H. R. 18367. An act granting an increase of pension to John Wilkinson;
H. R. 18378. An act granting an increase of pension to Martha A. Dunlap;
H. R. 18399. An act granting an increase of pension to Pauline Bietry;
H. R. 18400. An act granting an increase of pension to Elmira M. Gause;
H. R. 18402. An act granting an increase of pension to Lucy W. Powell;
H. R. 18426. An act granting a pension to Elizabeth Hathaway;
H. R. 18447. An act granting an increase of pension to Elijah G. Gould;
H. R. 18449. An act granting an increase of pension to Hannah R. Jacobs;
H. R. 18460. An act granting a pension to Benjamin F. Tudor;
H. R. 18467. An act granting an increase of pension to Rudolph W. H. Swendt;
H. R. 18469. An act granting an increase of pension to Samuel C. Dean;
H. R. 18486. An act granting an increase of pension to William F. Walker;
H. R. 18505. An act granting an increase of pension to M. Belle May;
H. R. 18509. An act granting an increase of pension to Ellen L. Stone;
H. R. 18510. An act granting an increase of pension to Hugh R. Rutledge;
H. R. 18524. An act granting an increase of pension to Julius Rector;
H. R. 18539. An act granting an increase of pension to Angeline R. Lomax;
H. R. 18542. An act granting an increase of pension to Sarah Ann Day;
H. R. 18551. An act granting an increase of pension to William D. Drown;
H. R. 18560. An act granting an increase of pension to John Hamilton;
H. R. 18561. An act granting an increase of pension to Jonathan Skeans;
H. R. 18572. An act granting an increase of pension to Allamanza M. Harrison;
H. R. 18573. An act granting an increase of pension to John M. Quinton;
H. R. 18605. An act granting an increase of pension to William Lawrence;
H. R. 18627. An act granting an increase of pension to Elizabeth A. Anderson;
H. R. 18628. An act granting an increase of pension to William E. Chambers;
H. R. 18633. An act granting an increase of pension to Jennie F. Belding;
H. R. 18651. An act granting an increase of pension to Elizabeth Thomas;
H. R. 18654. An act granting an increase of pension to Robert D. Gardner;
H. R. 18655. An act granting an increase of pension to Leander Gilbert;
H. R. 18678. An act granting an increase of pension to Evans P. Hoover;
H. R. 18696. An act granting an increase of pension to Louisa C. Gibson;
H. R. 18697. An act granting an increase of pension to Martha L. Beesley;
H. R. 18702. An act granting an increase of pension to Edward B. Prime;
H. R. 18724. An act granting an increase of pension to Alfred Gude;
H. R. 18730. An act granting an increase of pension to William C. Mahaffey;
H. R. 18746. An act granting an increase of pension to Isaac Howard;
H. R. 18747. An act granting an increase of pension to William H. Colegate;
H. R. 18794. An act granting an increase of pension to William C. McRoy;
H. R. 18795. An act granting an increase of pension to James E. Raney;
H. R. 18821. An act granting an increase of pension to Eliza Jane Witherspoon;
H. R. 18822. An act granting an increase of pension to Sophie S. Parker;
H. R. 18862. An act granting an increase of pension to Joseph H. Weaver;
H. R. 18887. An act granting an increase of pension to Alexander W. Carruth;
H. R. 18910. An act granting an increase of pension to Philo E. Davis;
H. R. 18930. An act granting an increase of pension to Eliza J. Mays;
H. R. 18935. An act granting an increase of pension to Mima A. Boswell;
H. R. 18959. An act granting an increase of pension to Albert G. Packer;
H. R. 18966. An act granting a pension to John W. Ward;
H. R. 18976. An act granting an increase of pension to Nelson S. Preston;
H. R. 19001. An act granting an increase of pension to Elizabeth A. McKay; and
H. R. 19005. An act granting a pension to Gideon M. Burriss.

Subsequently, the foregoing pension bills were severally read twice by their titles, and referred to the Committee on Pensions.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills, and they were thereupon signed by the Vice-President:

S. 2292. An act for the relief of certain entrymen and settlers within the limits of the Northern Pacific Railway land grant;
S. 4094. An act to amend section 4426 of the Revised Statutes of the United States, regulation of motor boats; and
H. R. 6101. An act for the relief of the estate of Charles M. Demarest, deceased.

PETITIONS AND MEMORIALS.

Mr. SCOTT presented memorials of the Conductors' Association of West Virginia, of Grafton; of Link Division, No. 352, Brotherhood of Locomotive Engineers of Martinsburg, and of sundry citizens of Charles Town, all in the State of West Virginia, remonstrating against the adoption of an amendment to the railway rate bill prohibiting the issuance of free transportation to the families of railway employees; which were ordered to lie on the table.

Mr. GALLINGER presented a memorial of the New England Hardware Dealers' Association, of Boston, Mass., remonstrating against the passage of the so-called "parcels-post bill;" which was referred to the Committee on Post-Offices and Post-Roads.

Mr. KEAN presented a petition of sundry citizens of Westfield, N. J., and the petition of R. D. Cann, of Plainfield, N. J., praying for the enactment of legislation to restrict immigration; which was referred to the Committee on Immigration.

He also presented petitions of Sanford E. Cobb, of East Orange; of Thomas Fenton Taylor, of South Orange, and of the De Ronde-Osborn Company, of Englewood, all in the State of New Jersey, praying for the removal of the internal-revenue tax on denaturized alcohol; which were referred to the Committee on Finance.

He also presented petitions of sundry citizens of Montclair, N. J., praying for the establishment of a national bureau in the Interior Department in behalf of the children of the country; which were referred to the Committee on Territories.

He also presented petitions of the Ladies' Auxiliary of the Home Missionary Society of the Roseville Methodist Episcopal Church, of Newark; of the congregation of the Monroe Avenue Methodist Episcopal Church, of Plainfield, and of sundry citizens, all in the State of New Jersey, praying that the direction of the schools of Alaska remain with the Bureau of Education, and also that the Bureau continue the control of the reindeer industry in that Territory; which were referred to the Committee on Territories.

Mr. RAYNER presented a petition of sundry citizens of Frederick, Md., praying for the removal of the internal-revenue tax on denaturized alcohol; which was referred to the Committee on Finance.

WILLIAM PERSONS.

Mr. LODGE, from the Committee on Military Affairs, to whom was referred the bill (S. 3256) for the relief of William Persons, reported it without amendment, and submitted a report thereon.

BRIDGE NEAR WHEELING, W. VA.

Mr. SCOTT. I introduce a bill, and ask for its present consideration.

The bill (S. 6146) to authorize the Back River Bridge Company to construct a bridge across the west or smaller division of the Ohio River from Wheeling Island, West Virginia, to the Ohio shore, was read the first time by its title, and the second time at length, as follows:

Be it enacted, etc., That the Back River Bridge Company, a corporation organized under the laws of the State of West Virginia, its successors and assigns, be, and they are hereby, authorized to construct, maintain, and operate a bridge and approaches thereto, for street railway and wagon traffic and other appropriate public uses, across the west or smaller channel of the Ohio River, known as the Back River, from a point near the southerly end of Wheeling Island, which is a part of the city of Wheeling, in the State of West Virginia, to the Ohio shore, in accordance with the provisions of the act entitled "An act to regulate the construction of bridges over navigable waters," approved March 23, 1906.

SEC. 2. That the right to alter, amend, or repeal this act is hereby expressly reserved.

Mr. KEAN. From what committee does the bill come?

The VICE-PRESIDENT. It is not reported from a committee, as the Chair understands.

Mr. KEAN. Is it a bill that has been just introduced?

The VICE-PRESIDENT. The bill was introduced by the Senator from West Virginia [Mr. SCOTT].

Mr. SCOTT. And I ask unanimous consent for its consideration.

Mr. KEAN. I do not like to object to anything the Senator from West Virginia wants, but I think the bill should be considered in its regular order.

Mr. SCOTT. Will the Senator allow me a moment?

Mr. KEAN. Certainly.

Mr. SCOTT. We have been passing bridge bills without having them referred. This bill was taken by me to the War Department yesterday, and the Chief Engineer recommends it; he said there would be no objection to it whatever. These people are waiting to construct a bridge over the Back River, that is not navigable; and it is a serious question whether it is necessary to have a bill passed at all in order to bridge it.

Mr. KEAN. I think we had better not pass the bill now. Let it take the regular course.

The VICE-PRESIDENT. Under objection, the bill will be referred to the Committee on Commerce.

BILLS INTRODUCED.

Mr. GALLINGER introduced a bill (S. 6147) authorizing changes in certain street railway tracks within the District of Columbia, and for other purposes; which was read twice by its title, and referred to the Committee on the District of Columbia.

Mr. FRAZIER introduced a bill (S. 6148) granting an increase of pension to James S. Whitlock; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 6149) to change and fix the time for holding the circuit and district courts of the United States for the middle district of Tennessee; in the southern division of the eastern district of Tennessee at Chattanooga, and the northeastern division of the eastern district of Tennessee at Greeneville, and for other purposes; which was read twice by its title, and referred to the Committee on the Judiciary.

AMENDMENT TO RAILROAD RATE BILL.

Mr. McCUMBER. I submit an amendment to the rate bill, which I ask may be read and lie on the table.

The amendment was read, and ordered to lie on the table, as follows:

Amendment intended to be proposed by Mr. McCUMBER to the bill (H. R. 12987) entitled "An act to amend an act entitled 'An act to regulate commerce,' approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission."

Insert after the word "dollars," in line 18 of page 4 of the reprint of sections 1, 2, 3, and 4, as amended by the Committee of the Whole, the following: "*Provided*, That nothing herein contained shall prevent such carrier from giving free or reduced transportation to any destitute or indigent sick, injured, or crippled person, or to laborers transported to any place to supply a demand for labor at such place, or to land or home seekers, or to the officers, agents, or employees, or members of the families of the officers, agents, or employees of such carrier, over the lines of railway operated by it."

IRRIGATION INVESTIGATIONS.

Mr. FRAZIER submitted an amendment proposing to increase the appropriation for irrigation and drainage investigations from $102,200 to $120,000, intended to be proposed by him to the agricultural appropriation bill; which was referred to the Committee on Agriculture and Forestry, and ordered to be printed.

WITHDRAWAL OF PAPERS—C. E. MOORE.

On motion of Mr. LONG, it was

Ordered, That on the application of C. E. Moore he is authorized to withdraw from the files of the Senate all papers accompanying Senate bill No. 3027, Fifty-sixth Congress, first session, entitled "A bill for the relief of C. E. Moore," there having been no adverse report thereon.

HOUSE BILL REFERRED.

H. R. 9238. An act for the relief of William Saphar was read twice by its title, and referred to the Committee on Military Affairs.

REGULATION OF RAILROAD RATES.

The VICE-PRESIDENT. The morning business is closed, and the Chair lays before the Senate the unfinished business.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission.

Mr. CULBERSON. I understand that section 5 of the bill is now under consideration. On page 13, line 18, I move to amend by striking out the word "two"——

The VICE-PRESIDENT. There is an amendment pending.

Mr. CULBERSON. Then this amendment is not in order. I thought there was no amendment pending.

The VICE-PRESIDENT. The pending amendment will be stated by the Secretary.

The SECRETARY. On page 17, line 14, after the word "office," strike out the period and insert a comma, and insert the words:

And if the order or requirement has been made against two or more carriers then in the district where any one of said carriers has its principal operating office, and if the carrier has its principal operating office in the District of Columbia then the venue shall be in the district where said carrier has its principal office; and jurisdiction to hear and determine such suits is hereby vested in such courts.

Mr. NELSON. Mr. President, I inquire what is the parliamentary status?

The VICE-PRESIDENT. The Chair was having the pending amendment stated.

Mr. NELSON. Is this an amendment to the amendment offered by the Senator from Illinois [Mr. CULLOM] last evening?

The VICE-PRESIDENT. This is the amendment offered by the Senator from Illinois [Mr. CULLOM]. To that an amendment has been offered by the Senator from Maryland [Mr. RAYNER], which will now be stated by the Secretary. The Secretary will read the amendment proposed by the Senator from Maryland.

The SECRETARY. After the word "courts," the last word of the proposed amendment, add:

But such jurisdiction shall not attach unless the order complained of was beyond the authority of the Commission or in violation of the rights of the carrier secured by the Constitution.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Maryland to the amendment of the Senator from Illinois.

Mr. CULBERSON. I dislike to ask it, but I would be glad to have the amendment to the amendment read again.

The VICE-PRESIDENT. It will be again read at the request of the Senator from Texas.

Mr. CULBERSON. Whose amendment is it?

The VICE-PRESIDENT. The original amendment was proposed by the Senator from Illinois [Mr. CULLOM]. The amendment to it is the one proposed by the Senator from Maryland [Mr. RAYNER]. Does the Senator from Texas wish to have both the amendment and the amendment to the amendment read?

Mr. CULBERSON. We might as well have both restated.

The VICE-PRESIDENT. The Secretary will again read the amendment and the amendment to the amendment.

The Secretary again read the amendment and the amendment to the amendment.

Mr. ALDRICH. Is the amendment to the amendment the same amendment the Senate voted down yesterday?

Mr. RAYNER. No.

Mr. ALDRICH. It must be substantially the same. There may be a change of a word, or something of that kind.

Mr. RAYNER. It is not the same amendment. It is the amendment of the Senator from Kansas [Mr. LONG] submitted some weeks ago, and identical with the amendment of the Senator from Kansas.

Mr. LONG. The Senator is very unfortunate in his understanding of the amendment he proposes. This is not the amendment that I proposed.

Mr. RAYNER. It is identical, and that is about as close as you can get.

The VICE-PRESIDENT. The question is on agreeing to the amendment to the amendment.

Mr. RAYNER. One moment, Mr. President——

Mr. CULBERSON. I desire to ask the Senator from Maryland what construction he puts on the word "authority" in his amendment? Does he believe that would give the courts a broad review in addition to passing upon the constitutionality of rates—that is to say, would it give the courts authority to pass upon whether or not the rate was in violation of the statute?

Mr. RAYNER. When I offered the amendment yesterday I used the word "jurisdiction," because I think the word "jurisdiction" is a better word than the word "authority." But, in my judgment, the word "authority" would refer to the statute and to nothing beyond—that is to say, if the Commission did not exceed its powers under the statute the act of the Commission would be lawful.

I have changed the word "jurisdiction" to the word "authority," because I have taken identically, word for word, the amendment of the Senator from Kansas, which he said he would vote for yesterday if I offered it. I repeat, I have taken it word for word.

Mr. CULBERSON. Will the Senator pardon another inquiry? I want to vote for his amendment if I can consistently with my views upon the question. I understand him to say now that the word "authority" would permit the court to pass upon the question as to whether the Commission had acted within the statute.

Mr. RAYNER. Yes.

Mr. CULBERSON. Would not that give them authority then to pass upon a question other than the constitutional question covered by the other phase of the amendment proposed?

Mr. RAYNER. I am perfectly willing to explain what I think the word "authority" means. If the Commission fixes a rate, I do not think the court would have the right to review the proposition whether the rate fixed by the Commission——

Mr. SPOONER. I want to hear the Senator from Maryland, but I can not hear him.

The VICE-PRESIDENT. The Senate will be in order.

Mr. SPOONER. I am not very far from him and can not hear him.

The VICE-PRESIDENT. The difficulty seems to be in the Senator's neighborhood.

Mr. SPOONER. I am not responsible for that, except as addressing the Chair. I was absolutely silent.

Mr. RAYNER (to Mr. CULBERSON). Am I in your time or my own?

Mr. CULBERSON. I simply asked the Senator a question.

Mr. RAYNER. I will answer the question by stating that I think under the amendment of the Senator from Iowa the court would have the right to determine whether or not a rate fixed by the Commission was in accordance with the reasonable standard provided for by Congress. That is as concise as I can put it.

Mr. SPOONER. Mr. President——

Mr. RAYNER. Let me just finish this sentence. That to my mind draws the distinction between what is called the constitutional amendment and the statutory amendment. And I want to say right here, and it is the view I think has been running in the mind of the Senator from Pennsylvania all the time, that when the courts review the action of the Commission under the Allison amendment they have the right in every case to say whether or not the rate or the regulation or the practice fixed by the Commission was in accordance with the standard of reasonableness adopted by Congress. Now, when you use the word "jurisdiction," that, I think, prevents the court from considering that question, because the sole question under the head of jurisdiction would be whether or not the Commission had exceeded its powers as defined in the statute.

Mr. SPOONER. Will the Senator allow me to ask him a question?

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Wisconsin?

Mr. RAYNER. I do.

Mr. SPOONER. If the Commission fixes a rate unreasonably and unjustly low, would it be within or without the authority conferred by the statute?

Mr. LONG. It was impossible to hear the Senator from Wisconsin in this part of the Chamber.

Mr. SPOONER. My question was, If the Commission fixes a rate unreasonably low, would it be within or without the authority conferred by the statute on the Commission?

Mr. RAYNER. In my judgment it would be absolutely within the law, and the court would have a right to review it under the Allison amendment, but not under the Long amendment I have now duplicated and offered.

If the Allison amendment was not here the courts would have no right to inquire into the question whether or not the rate fixed by the Commission was in accordance with the reasonable standard provided for by Congress. My whole argument is that under the Allison amendment you give the courts the power not to determine the constitutional question whether or not the property of a carrier had been taken without just compensation, but to inquire into the proposition in every case whether the rate fixed by the Commission, or the regulation or practice adopted by the Commission, was reasonable in accordance with the standard here legislated by Congress, and the two propositions are different.

Mr. SPOONER. If the Commission fixes a rate unreasonably low, would it not be a violation of the Constitution?

Mr. RAYNER. In what respect, I should like to ask the Senator from Wisconsin, unless it took the property of the carrier without just compensation?

Mr. SPOONER. If unreasonably low, would it be just compensation under the Constitution?

Mr. RAYNER. It may undoubtedly be unreasonably low, and still afford just compensation to the carrier. It may be unreasonably low so far as the carrier is concerned, and still not deprive the carrier of just compensation under the Constitution. There is a broad margin between those two propositions.

Mr. ALDRICH. That is what I was wondering about. I was very curious to hear what the Senator from Maryland would say in answer to the question of the Senator. I am awaiting his answer with great interest.

Mr. NELSON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Minnesota?

Mr. NELSON. I rise to a point of order.

The VICE-PRESIDENT. The Senator from Minnesota will state his point of order.

Mr. NELSON. As I understand the situation, last night the Senator from Illinois [Mr. CULLOM] offered an amendment, which was pending, and then the Senator from Maryland [Mr. RAYNER] offered a substitute, or an amendment to that amendment. Those are the two propositions that are pending, and at this time the amendment of the Senator from Texas can not be in order. I call the attention of the Chair to page 6900 of the RECORD. So the question now is upon the amendment of the Senator from Maryland to the amendment of the Senator from Illinois.

The VICE-PRESIDENT. That is as the Chair stated it. The question is on agreeing to the amendment proposed by the Senator from Maryland to the amendment.

Mr. RAYNER. Mr. President, I did not intend to make any remarks at all this morning.

Mr. GALLINGER. Will the Senator kindly allow me to offer an amendment to the pending bill, to be printed? I submit a proposed amendment, which need not be read. I ask that it be printed.

The VICE-PRESIDENT. The amendment will be printed, and lie on the table.

Mr. RAYNER. As I have said, I did not intend to make any further remarks this morning. I do not see that I accomplish anything, practically; but the question has been asked and I propose to answer it. I answer it in this way: I say that this present amendment opens up the whole case for a new trial in the courts. The first amendment submitted by the Senator from Kansas [Mr. LONG] only confers upon the court the right to try the question whether the property of the carrier has been taken without just compensation or whether the Commission has exceeded its jurisdiction or authority. I have used the words "jurisdiction" and "authority" interchangeably. I like the word "jurisdiction" much better, but I am inclined to think "authority" answers the same purpose.

Now, I want to answer the question of the Senator from Wisconsin by a practical illustration. Suppose the Commission fixed the rate between Baltimore and Washington. We will say the rate now is a dollar. Suppose it fixed the rate at 90 cents. That would be unreasonably low by comparison; and the Baltimore and Ohio Railroad could show, perhaps, that the rate of 90 cents or 80 cents would be unreasonably low, because the comparison is the test. The Supreme Court has held that comparison is the best test. But it would be impossible for the railroad to show that the rate of 90 cents has taken its property without just compensation, within the meaning of the fifth amendment. It could not possibly do it. Under the first amendment of the Senator from Kansas, which I am in favor of, it would be compelled to do it. Under this amendment, which confers upon the court the jurisdiction to suspend, to set aside or annul any rate, a carrier would have a right to show that that rate is un-

reasonably low. That is the distinction between the two propositions.

I wanted to say this yesterday, if I had had time, that this proposition opens the courts to the whole inquiry that is before the Commission, and the constitutional review only opens the court to the proposition whether or not the property of the carrier has been taken without just compensation. Let me read you what this review opens the courts to. Of course, if any Senator can not see any distinction between these two propositions, it is not my fault—the distinction between a rate that is unreasonably low between a carrier and a shipper, and a rate that takes away the property of the carrier without just compensation.

Let me read to the Senator from Rhode Island [Mr. ALDRICH] what the court will inquire into in an action where the whole case goes into court, as it does under the Allison amendment. I read from a text writer upon this subject—from the "Annotated Interstate Commerce Act and Federal Anti-Trust Laws," by Snyder. It is a very valuable book. Here is the proposition that the court will inquire into:

> First, amount of through and local business; bonded debt; bulk; character of commodity; comparison of rates; cost of service; distance; former rates; geographical situation; return loads; special train service; value of freight; weight—

And a dozen other propositions that this text writer has given, that the court inquires into when the whole case goes before the court as it does under the present law.

Mr. NELSON. Will the Senator allow me a question?

Mr. RAYNER. I have only fifteen minutes, and as the Senator from Minnesota will have fifteen minutes of his own time I hope he will allow me to proceed.

The VICE-PRESIDENT. The Senator from Maryland declines to yield.

Mr. RAYNER. How much time have I remaining? It is impossible with these interruptions to tell.

The VICE-PRESIDENT. The Senator has one minute and a half more.

Mr. RAYNER. I do not think I have spoken thirteen and a half minutes.

The VICE-PRESIDENT. The Senator from Maryland took the floor at 11 o'clock and 15 minutes, according to the record of the Secretary. The Chair will state for the benefit of Senators that the time consumed by interruptions is deducted from the fifteen minutes. A Senator has it within his own power to control his time absolutely by objecting to interruptions.

Mr. RAYNER. The first part of these remarks was taken up in answering the Senator from Texas, who asked me a question in his own time.

Mr. ALDRICH. Oh, no.

Mr. RAYNER. I was not on the floor. Now, I want to state to the Senator from Rhode Island that I will get the fifteen minutes, and I will answer the question before this amendment is voted on.

Mr. ALDRICH. I hope the Senator will.

Mr. RAYNER. I will get the floor if I want it, and I will answer the question. The Senator from Rhode Island seems to be in a great hurry now, though in the last four or five weeks he was in favor of delaying this bill. Now when we have this pivotal matter before us he wants to rush it through; but I will try to prevent it with all the zeal I can and whatever ability I have if I desire to obtain the floor again.

Mr. LONG. Mr. President, the amendment offered by the Senator from Maryland to the amendment of the Senator from Iowa [Mr. ALLISON] is not the amendment that I proposed some weeks since and had printed. As I stated yesterday, I believe that the action of the courts would be the same under the amendment which I proposed as under the amendment of the Senator from Iowa. Under both these amendments or without any amendment to the House bill as to a court review, the question would be presented whether under section 4 of this bill, which amends section 15 of the present law, the courts would review and revise the discretion of the Commission. That section is the foundation stone of this legislation. Certain powers and duties are imposed upon the Interstate Commerce Commission. It is empowered to determine and prescribe a rate which in its judgment is just and reasonable. Discretion is lodged by Congress in the Commission by these words, and that being the case, under the amendment of the Senator from Iowa, under my amendment, or under the House bill without any amendment, the following propositions sustained by the decisions of the Supreme Court are applicable:

First. *As a general rule when Congress confides to a public officer or tribunal the performance of a specific duty which requires the exercise of discretion and judgment, the finding of the officer or tribunal upon the facts presented is conclusive, and while subject to judicial review, the finding or judgment will not be disturbed by the courts unless there is a statutory provision which shows that Congress intended the courts to consider all the facts and revise the judgment or discretion of the officer or tribunal.*

This doctrine is so firmly established by the decisions of the Supreme Court that it is hardly necessary to refer to cases. It was announced by Justice Story in the United States circuit court in the case of Allen *v.* Blunt (3 Story, 745), in which he said:

> In short, it may be laid down as a general rule that where a particular authority is confided to a public officer to be exercised by him in his discretion upon an examination of facts, of which he is made the appropriate judge, his decision upon these facts is, in the absence of any controlling provisions, absolutely conclusive as to the existence of those facts.

The above decision was rendered in 1845, and was followed by the Supreme Court, and quoted with approval in United States *v.* Wright (11 Wallace, 650), in which the court, speaking of the authority of the Postmaster-General to conclusively determine a matter that had been confided to him by Congress, said:

> Congress constituted him the sole judge to determine not only whether the exigencies in the case had arisen, but, if they had, the manner and extent of the allowance, and it is not competent for court or jury to revise his decision, nor is it reexaminable anywhere else, as there is no provision in the law to that effect.

The leading case which has been cited or referred to in all other cases since decided was that of Murray's Lessee *v.* Hoboken (18 Howard, 284), handed down in 1855, in which Justice Curtis, speaking for the court, said:

> To avoid misconstruction upon so grave a subject, we think it proper to state that we do not consider Congress can either withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty; nor, on the other hand, can it bring under the judicial power a matter which, from its nature, is not a subject for judicial determination. At the same time there are matters, involving public rights, which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper. Equitable claims to land by the inhabitants of ceded territories form a striking instance of such a class of cases; and as it depends upon the will of Congress whether a remedy in the courts shall be allowed at all, in such cases, they may regulate it and prescribe such rules of determination as they may think just and needful. Thus it has been repeatedly decided in this class of cases, that upon their trial the acts of executive officers, done under the authority of Congress, were conclusive, either upon particular facts involved in the inquiry or upon the whole title. (Foley *v.* Harrison, 15 How., 433; Burgess *v.* Gray, 16 How., 48; ——— *v.* The Minnesota Mining Company at the present term.)
>
> It is true, also, that even in a suit between private persons to try a question of private right, the action of the executive power, upon a matter committed to its determination by the Constitution and laws, is conclusive. (Luther *v.* Borden, 7 How., 1; Doc *v.* Braden, 16 How., 635.)

In the above case it was clearly decided that there were matters involving public rights which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper; that it depends upon the will of Congress whether a remedy in the courts will be allowed at all, and that Congress may regulate it and prescribe such rules as it may deem just and needful. The court clearly states that, in this class of cases, the acts of executive officers, done under the authority of Congress, were conclusive.

In Nishimura *v.* United States (142 U. S., 660), Justice Gray announced the same doctrine and used the following language:

> And Congress may, if it sees fit, as in the statutes in question in United States *v.* Jung Ah Lung, just cited, authorize the courts to investigate and ascertain the facts on which the right to land depends. But, on the other hand, the final determination of those facts may be entrusted by Congress to executive officers; and in such a case, as in all others, in which a statute gives a discretionary power to an officer, to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, *unless expressly authorized by law to do so*, is at liberty to reexamine or controvert the sufficiency of the evidence on which he acted. (Martin *v.* Mott, 12 Wheat., 19, 31; Philadelphia and Trenton Railroad *v.* Stimpson, 14 Pet., 448, 458; Benson *v.* McMahon, 127 U. S., 457; In re Oteiza, 136 U. S., 330.)

It will be observed that Justice Gray made the same distinction that had been made by Justice Curtis in the previous case, and stated that Congress might, if it saw fit, authorize the courts to investigate and ascertain the facts upon which the right to admission into the United States depends. But, on the other hand, Congress might intrust the final determination of those facts to executive officers, and that in such a case, as in all others, in which a statute gives discretionary power to an officer to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by law to do so, is at liberty to reexamine or controvert the sufficiency of the evidence on which he acted.

In Fong Yue Ting *v.* United States (149 U. S., 712) Justice Gray reaffirmed the same doctrine, and stated that the power to

exclude aliens is regulated by treaty or act of Congress, and the duty being imposed upon the Executive the judicial department would not interfere unless authorized by treaty or by statute, or unless required to do so by the paramount law of the Constitution.

In Lem Moon Sing *v.* United States (158 U. S., 546) Justice Harlan, for the court, said:

> The remedy of the appellant was by appeal to the Secretary of the Treasury from the decision of his subordinate, and not to the courts. If the act of 1894 had done nothing more than appropriate money to enforce the Chinese-exclusion act, the courts would have been authorized to protect any right the appellant had to enter the country if he was of the class entitled to admission under existing laws or treaties, and was improperly excluded. But when Congress went further, and declared that in every case of an alien excluded by the decision of the appropriate immigration or customs officers "from admission into the United States under any law or treaty," such decision should be final, unless reversed by the Secretary of the Treasury, the authority of the courts to review the decision of the executive officers was taken away. (United States *v.* Rogers, 65 Fed. Rep., 787.) If the act of 1894, thus construed, takes away from the alien appellant any right given by previous laws or treaties to reenter the country, the authority of Congress to do even that can not be questioned, although it is the duty of the courts not to construe an act of Congress as modifying or annulling a treaty made with another nation, unless its words clearly and plainly point to such a construction.

It will be seen that the above case follows the same doctrine of the previous cases, holding that Congress had the power to determine the procedure for the exclusion of aliens. Under acts previous to that of 1894 the courts had been authorized to investigate the facts and determine certain questions. But in the act of 1894 Congress said that the decision of the immigration officer was final, unless reversed by the Secretary of the Treasury, and the Supreme Court decided that the authority to review the decisions of the executive officers was taken away by this act. In the same case the court decided that as the question had been constitutionally committed by Congress to officers of the Executive Department that their determination was final.

In Travelers' Insurance Company *v.* Connecticut (185 U. S., 371), Justice Brewer, for the court, said that the courts are not authorized to substitute their views for those of the legislature in a taxation case.

In Japanese Immigration case (189 U. S., 97) Justice Harlan, for the court, said:

> The constitutionality of the legislation in question, in its general aspects, is no longer open to discussion in this court. That Congress may exclude aliens of a particular race from the United States; prescribe the terms and conditions upon which certain classes of aliens may come to this country; establish regulations for sending out of the country such aliens as come here in violation of law; and commit the enforcement of such provisions, conditions, and regulations exclusively to executive officers, *without judicial intervention*, are principles firmly established by the decisions of this court. (Nishimura Ekiu *v.* United States, 142 U. S., 651; Fong Yue Ting *v.* United States, 149 U. S., 698; Lem Moon Sing *v.* United States, 158 U. S., 538; Wong Wing *v.* United States, 163 U. S., 228; Fok Yung Yo *v.* United States, 185 U. S., 296, 305.)

It will be observed that in this case the power of Congress to commit the enforcement of the exclusion laws to executive officers, without judicial intervention, was considered to be firmly established. To the same effect is the case of Riverside Oil Company *v.* Hitchcock (194 U. S., 324), in which Justice Peckham, for the court, announced the doctrine that neither injunction nor mandamus would lie against an officer of the land deparment to control him in discharging an official duty which required the exercise of his judgment and discretion. Speaking of the Secretary of the Interior, to whom had been committed the duty of deciding certain questions, Justice Peckham said:

> Whether he decided right or wrong, is not the question. Having jurisdiction to decide at all, he had necessarily jurisdiction, and it was his duty to decide as he thought the law was, and the courts have no power whatever under those circumstances to review his determination by a mandamus or injunction. The court has no general supervisory power over the officers of the land department, by which to control their decision upon questions within their jurisdiction. If this writ were granted we would require the Secretary of the Interior to repudiate and disaffirm a decision which he regarded it his duty to make in the exercise of that judgment which is reposed in him by law, and we should require him to come to a determination upon the issues involved directly opposite to that which he had reached, and which the law conferred upon him the jurisdiction to make. Mandamus has never been regarded as the proper writ to control the judgment and discretion of an officer as to the decision of a matter which the law gave him power and imposed upon him the duty to decide for himself. The writ never can be used as a substitute for a writ of error. Nor does the fact that no writ of error will lie in such a case as this, by which to review the judgment of the Secretary, furnish any foundation for the claim that mandamus may therefore be awarded. The responsibility as well as the power rests with the Secretary, uncontrolled by the courts.

Justice Brown, in Bates *v.* Payne (194 U. S., 108), for the court, announced the same rule in the following language:

> But there is another class of cases in which the rule is somewhat differently, and perhaps more broadly, stated, and that is, that where Congress has committed to the head of a Department certain duties requiring the exercise of *judgment and discretion*, his action thereon, whether it involve questions of law or fact, will not be reviewed by the courts, unless he has exceeded his authority or this court should be of opinion that his action was clearly wrong.

He further said:

> The rule upon this subject may be summarized as follows: That where the decision of questions of fact is committed by Congress to the *judgment and discretion* of the head of a Department, his decision thereon is conclusive; and that even upon mixed questions of law and fact, or of law alone, his action will carry with it a strong presumption of its correctness, and the courts will not ordinarily review it, although they may have the power, and will occasionally exercise the right of so doing.

In the Public Clearing House *v.* Coyne (194 U. S., 508) Justice Brown, in delivering the opinion of the court, stated that most of the matters presented to the Departments required for their solution the judgment or discretion of the head of the Department, and in many cases, notably those connected with the disposition of the public lands, the action of the Department is accepted and followed by the courts, and even when involving questions of law there is a strong presumption of its correctness.

In United States *v.* Ju Toy (198 U. S., 263) Justice Holmes, delivering the opinion of the court, said that even though the Fifth Amendment did apply to one seeking entrance to this country, and to deny him admission may deprive him of liberty, yet due process of law does not necessarily require a judicial trial, and Congress may intrust the decision of his right to enter to an executive officer, whose decision in the matter is final and not subject to review by the courts.

In the case of Pittsburg Railway Company *v.* Backus (154 U. S., 434) Justice Brewer, for the court, stated the rule in the following language:

> Whenever a question of fact is thus submitted to the determination of a special tribunal, its decision creates something more than a mere presumption of fact, and if such determination comes into inquiry before the courts it can not be overthrown by evidence going only to show that the fact was otherwise than as so found and determined.

In order that the determination of an executive officer upon an investigation made of certain facts on a subject committed by Congress to the determination of that officer shall be conclusive, the words of the statute must show that it was the intention of Congress to leave the determination of the question to the judgment or discretion of the officer or board.

In section 3929 of the Revised Statutes, being the statute authorizing the Postmaster-General to close the mails to lotteries, gift enterprises, etc., the statute says:

> The Postmaster-General may, upon evidence satisfactory to him that any person is engaged in conducting any fraudulent lottery, etc.

In the case of Buttfield *v.* Stranahan (192 U. S., 470) the act of March 2, 1897, in relation to tea, was sustained. By section 3 of that act the Secretary of the Treasury, upon the recommendation of a board that he was to appoint, was authorized to fix and establish uniform standards of purity, quality, and fitness for consumption of all kinds of teas imported into the United States, etc., and it provided that all teas or merchandise described as teas of inferior quality and fitness for consumption to such standard, should be deemed to be within the prohibition of the section of the act which provided that all teas which were inferior to certain standards should not be imported.

In the case of Field *v.* Clark (143 U. S., 680) section 3 of the act of October 1, 1890, was sustained, and by that act the President was authorized to suspend the free introduction of certain articles into the United States and impose certain duties upon them when the President *shall be satisfied* that a foreign government imposes duties on our products which he may deem to be reciprocally unequal and unreasonable.

In all these acts which have been sustained as not conferring legislative power, words are used which clearly show the intention of Congress to lodge in the executive officer discretion and the power to use his judgment in the decision of certain facts.

In section 4 of this bill authority is given to the Interstate Commerce Commission, when it shall be of the opinion that rates made by a carrier are unjust and unreasonable, to determine and prescribe what shall in its judgment be a just, reasonable rate, to be thereafter observed as a maximum to be charged. These words clearly show the intent of Congress to confer upon the Commission a discretion in determining what are just and reasonable rates, and these words, or language of the same import, are necessary in order that the power conferred upon the Commission shall be of any substantial worth.

In construing the present interstate-commerce law the Supreme Court, under the statute providing that the findings of the Commission are to be taken as prima facie evidence in court, has decided it is the duty of the Commission to investigate the facts, and then the court will give great weight to the findings of the Commission, and will not set them aside except in cases where they were clearly wrong.

In the case of Texas and Pacific Railway *v.* Interstate Commerce Commission (162 U. S., 238) Justice Shiras, in delivering the opinion of the court, said:

> The defendant was entitled to have its defence considered, in the first instance at least, by the Commission upon a full consideration

of all the circumstances and conditions upon which a legitimate order could be founded. The questions whether certain charges were reasonable or otherwise, whether certain discriminations were due or undue, were questions of fact, to be passed upon by the Commission in the light of all facts duly alleged and supported by competent evidence, and it did not comport with the true scheme of the statute that the circuit court of appeals should undertake, of its own motion, to find and pass upon such questions of fact, in a case in the position in which the present one was.

We do not, of course, mean to imply that the Commission may not directly institute proceedings in a circuit court of the United States charging a common carrier with disregard of provisions of the act, and that thus it may become the duty of the court to try the case in the first instance. Nor can it be denied that, even when a petition is filed by the Commission for the purpose of enforcing an order of its own, the court is authorized to "hear and determine the matter as a court of equity," which necessarily implies that the court is not concluded by the findings or conclusions of the Commission; yet as the act provides that, on such hearing, the findings of fact in the report of said Commission shall be prima facie evidence of the matters therein stated, we think it plain that if, in such a case, the Commission has failed in its proceedings to give notice to the alleged offender, or has unduly restricted its inquiries upon a mistaken view of the law, the court ought not to accept the findings of the Commission as a legal basis for its own action, but should either inquire into the facts on its own account, or send the case back to the Commission to be lawfully proceeded in.

In the case of the Louisville Railroad Company *v.* Behlmer (175 U. S., 675), Justice White in delivering the opinion of the court said:

If, then, we were to undertake the duty of weighing the evidence, in this record, we would be called upon, as a matter of original action, to investigate all these serious considerations which were shut out from view by the Commission, and were not weighed by the circuit court of appeals, because both the Commission and the court erroneously construed the statute. But the law attributes prima facie effect to the findings of fact made by the Commission, and that body, from the nature of its organization and the duties imposed upon it by the statute, is peculiarly competent to pass upon questions of fact of the character here arising.

In the case of East Tennessee Railway Company *v.* Interstate Commerce Commission (181 U. S. 27), Justice White, in delivering the opinion of the court, said:

To state these issues is at once to demonstrate that their decision, as a matter of first impression, properly belonged to the Commission, since upon that body the law has specially imposed the duty of considering them. Whilst the court has in the discharge of its duty been at times constrained to correct erroneous constructions which have been put by the Commission upon the statute, it has steadily refused, because of the fact just stated, to assume to exert its original judgment of the facts, where, under the statute, it was entitled, before approaching the facts, to the aid which must necessarily be afforded by the previous enlightened judgment of the Commission upon such subjects.

These decisions are under the present statute in which the Commission is not given authority to determine and prescribe a reasonable maximum rate to take the place of one that it condemns. This bill imposes that duty upon the Commission, and under the decisions above quoted I believe the courts will follow the rule above referred to.

Second. *It must not be inferred that the courts can not review or set aside determinations of officers or tribunals to which Congress has confided certain duties. Their action or determinaton is always set aside when they act beyond the authority of the law which authorized them to act at all.*

It is scarcely necessary to refer to authorities to support the above proposition. The jurisdiction of such subordinate tribunals is, of necessity, limited and they can only act within the scope of the authority given them by Congress. One of the latest cases decided by the Supreme Court is that of School of Magnetic Healing *v.* McAnnulty (187 U. S., 108), in which Justice Peckham discussed the limitations under which an executive officer acts, to whom Congress committed a certain duty. He said:

That the conduct of the Post-Office is a part of the administrative department of the Government is entirely true, but that does not necessarily and always oust the courts of jurisdiction to grant relief to a party aggrieved by any action by the head or one of the subordinate officials of that department which is unauthorized by the statute under which he assumes to act. The acts of all its officers must be justified by some law, and in case an official violates the law to the injury of an individual the courts generally have jurisdiction to grant relief.

The land department of the United States is administrative in its character, and it has been frequently held by this court that, in the administration of the public-land system of the United States, questions of fact are for the consideration and judgment of the land department, and its judgment thereon is final. (Burfenning *v.* Chicago, etc., Railway Company, 163 U. S., 321; Johnson *v.* Drew, 171 U. S., 93, 99; Gardner *v.* Bonestell, 180 U. S., 362.)

While the analogy between the above-cited cases and the one now before us is not perfect, yet even in them it is held that the decisions of the officers of the department upon questions of law do not conclude the courts, and they have power to grant relief to an individual aggrieved by an erroneous decision of a legal question by department officers.

He further said:

The facts, which are here admitted of record, show that the case is not one which by any construction of those facts is covered or provided for by the statutes under which the Postmaster-General has assumed to act, and his determination that those admitted facts do authorize his action is a clear mistake of law as applied to the admitted facts, and the courts, therefore, must have power in a proper proceeding to grant relief. Otherwise, the individual is left to the absolutely uncontrolled and arbitrary action of a public and administrative officer, whose action is unauthorized by any law and is in violation of the rights of the individual. Where the action of such an officer is thus unauthorized he thereby violates the property rights of the person whose letters are withheld.

The above case establishes the doctrine that where an executive officer is authorized by Congress to perform an administrative function, that his acts, beyond the scope of his authority, are void, and if he misconstrues the law relief may be had by injunction in the courts to restrain his illegal and unauthorized acts.

In the case of Public Clearing House *v.* Coyne (194 U. S., 508) Justice Brown, in construing the McAnnulty case above referred to, stated that the constitutionality of a law authorizing the Postmaster-General to make seizure of certain kinds of mail was assumed, the only reservation being that the person injured may apply to the courts for redress in case the Postmaster-General has exceeded his authority, or his action is palpably wrong. Many more cases might be cited, showing that while the courts will not review or revise the discretion of an officer to whom Congress confided certain duties, yet when that officer exceeded his authority or acts without warrant of law, his illegal acts will be restrained by the courts.

In the Reagan case (154 U. S., 362), to which I referred yesterday, there was an examination of the justness and reasonableness of rates made by the Texas commission, but only to ascertain whether any constitutional right of the carrier had been invaded or the commission had exceeded its authority. The railroad law of Texas has the broadest kind of review. It was construed by the supreme court of that State in The Railroad Commission case (90 Texas, 363) as imposing the duty upon the court to examine into the whole question irrespective of the finding of the commission. Yet the Supreme Court of the United States in considering an order of the Texas commission confined itself to the question as to whether or not the rates were so low as not to give the carrier a fair return on the property that was employed in the service.

Mr. CULBERSON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Kansas yield to the Senator from Texas?

Mr. LONG. Certainly.

Mr. CULBERSON. Before the Senator from Kansas passes from the Reagan case, I call his attention to the fact that, as I understand the law, he states that case too broadly when he says that it permits a broad review as to whether a rate is just or reasonable. If he will turn to that case and examine it, especially the statement——

Mr. LONG. I can not hear what the Senator says.

Mr. CULBERSON. If the Senator will turn to the statement of that case, which contains the law on the subject, he will find that there is an absolute prohibition against an examination of the justness of the rate as between the individual shipper and the carrier. The statute, in the second place, provides that in a single suit brought by a railroad company against the railroad commission of Texas the reasonableness of the rates may be inquired into. To that extent it is a broad review, and it does not permit any inquiry at all into the reasonableness of the rate as between the individual shipper and the carrier.

Mr. LONG. It permits the carrier in a suit that it may bring against the Commission to show that the rates or charges complained of are unreasonable and unjust to it or to them, and that is the whole question. It permits them to do this independently of what the finding of the Commission may have been.

In the Railway Commission case (90 Tex., 363), the court said:

It is true that the courts have established the rule that the reasonableness and justice of rates fixed by the legislature, or by a commission empowered by it so to do, are ordinarily questions committed to the discretion of those bodies and not subject to revision by the courts, but in such cases the law did not authorize any revision of such action by the judicial department.

This case was followed in Railway Commission case (96 Texas, 394).

Third. *The Supreme Court has decided that when a rate made by legislative authority, either by the legislature direct or through the assistance of a commission, is challenged in court, that the court will only inquire into the question whether the rate is so low as not to afford a fair return on the property employed in performing the service. The decision of the commission is final on all questions, except when constitutional rights are involved or when the commission acts beyond the authority of the law.*

A trial before a board or executive officer has been determined to be due process of law when Congress has committed to such

an officer a certain duty to perform according to his judgment, but it is not due process of law when the question of a rate made by legislative authority is under consideration. In such a case due process of law means a trial in a court of justice, and was so decided in the Minnesota Milk case (134 U. S., 459). In that case the constitutional rights of the carrier were invaded, and the court decided that it was entitled to a hearing in a court of justice on the determination of those questions, but it has never decided that without special statutory authority a court will review the justness and reasonableness of rates made by a commission. In determining whether a rate is just and reasonable a great many elements are taken into consideration by the carrier or by a commission in making a rate. The questions of wisdom and policy are involved, and these questions will not be reviewed by the court.

The court will, without any special authority by statute, inquire whether a rate made by Congress direct, or through the assistance of a commission, is so high as to be extortionate to the shipper, or so low as to be confiscatory to the carrier.

Justice Brewer, while judge of the United States circuit court, in the Chicago Northwestern Railway Company *v.* Dey (35 Fed. Rep., 874), laid down the following rule for judicial interference of rates made by legislative authority. He said:

> It is obvious from these last quotations that the mere fact that the legislature has pursued the forms of law in prescribing a schedule of rates does not prevent inquiry by the courts, and the question is open, and must be decided in each case, whether the rates prescribed are within the limits of legislative power, or mere proceedings which, in the end, if not restrained, will work a confiscation of the property of complainant. Of course, some rule must exist, fixed and definite, to control the action of the courts, for it can not be that a chancellor is at liberty to substitute his discretion as to the reasonableness of rates for that of the legislature. The legislature has the discretion, and the general rule is that where any officer or board has discretion, its acts within the limits of that discretion are not subject to review by the courts.

The following extracts from Walter C. Noyes's book on American Railroad Rates, pages 211, 212, and 213, agree with the above opinion of Judge Brewer:

> The standard of reasonableness applied by the courts in determining the validity of a schedule of rates prescribed by legislative authority is essentially different from that considered in a controversy between a shipper and the railroad. As we have seen, the courts, under the common law, have power to pass upon the reasonableness of the charges of common carriers. In determining the question of reasonableness, the courts must consider all the factors entering into the rate. They may substitute their judgment of a just and proper charge for that of the carrier. But the courts can not substitute their judgment of a reasonable rate in place of that of the legislature or the legislature's subordinate body. The act of the legislature in fixing a rate is a law that such shall be the rate. The courts can no more question its expediency or propriety than in the case of any other law. It is immaterial whether they think, under all the circumstances, that it should have been greater or less. The courts have nothing to do with legislative-made rates except to determine whether they violate constitutional provisions. The inquiry is whether the rates prescribed by law are so unreasonably low as to infringe the property rights of the railroad. The duty of the courts is to determine whether the rates are confiscatory, not whether they are fair between shipper and carrier. * * * And it makes no difference that the statute empowering the Commission to act provides that rates shall be reasonable and just. This is a general rule for the Commission, but the discretion to be exercised in determining what rates *are* reasonable and just is the discretion of the Commission upon which the discretionary power has been conferred, and not of the courts upon which the power has not been conferred.

If the decision of the Commission is not to be final on such questions, why have a commission at all? If Congress imposes the duty upon the Commission of ascertaining what is a just and reasonable rate, then its decisions should be conclusive, unless it makes a rate that compels the carrier to perform a service without a fair return on the property employed in the service. It is the question of an adequate and fair return that the courts will inquire into, and upon which the determination of the Commission is not final. On all other questions before the Commission its decisions should be final and conclusive, as they will be, unless we place in this bill a provision authorizing the courts to review the justness and reasonableness of the rate fixed, aside from the constitutional question as to whether it affords a fair return, and then, I believe, the courts would not perform that duty, but possibly declare the whole act void.

I see no need of a commission if all of its acts are to be subject to be set aside by the courts. The court will not inquire into the whole case and try it de novo, unless there is special statutory authority to do so, and it will not review or revise the discretion of the Commission or set aside its orders unless the rate fixed is so low as not to afford a fair return on the property employed in the service. This is a judicial function that we can not and should not attempt to take away from the courts. The inquiry before the Commission on this point is not due process of law, but this question must be tried in a court. If the Commission fixes a rate so low that it does not afford a fair return, then it would be taking the property of the carrier without due process of law to put the rate immediately into effect and keep it in effect until the final hearing of the case. If the rate is fixed so low by the Commission that it does not afford a fair return on the property employed, the carrier can not be compelled to accept such a rate for a single day, and Congress can not take from the courts the power to grant a carrier immediate relief under such circumstances. If a carrier can demand a trial in court on this question of a fair return and prevent the Commission from permanently taking his property, it can not be prevented from having the right to prevent the temporary taking of his property unless there has been a trial of this question in a court where due process of law can be secured.

On the constitutional question as to whether the rate affords a fair return on the property employed, the hearing before the Commission is not due process of law, and the rate can not be enforced for a single day unless it affords a fair return on the property employed.

The constitutionality of State statutes authorizing the fixing of rates by a commission was sustained in the two leading cases, the Railroad Commission case (116 U. S., 307) and the Reagan case (154 U. S., 362). Justice Brewer, in the Maximum Rate case (167 U. S., 479), said:

> Congress might itself prescribe the rates, or it might commit to some subordinate tribunal this duty.

That this is not a delegation of legislative power is shown by the cases of Field *v.* Clark (143 U. S., 680) and Buttfield *v.* Stranahan (192 U. S., 496). If Congress can not fix rates through the instrumentality of a commission it can not be done at all. Congress can provide that rates shall be just and reasonable and then leave to a commission the duty of ascertaining the facts and fixing the rate according to this standard. As was said by Justice White in the Stranahan case:

> Congress legislated on the subject as far as was reasonably practicable, and from the necessities of the case was compelled to leave to executive officials the duty of bringing about the result pointed out by the statute. To deny the power of Congress to delegate such a duty would, in effect, amount but to declaring that the plenary power vested in Congress to regulate foreign commerce could not be efficaciously exerted.

If Congress can not fix rates in the manner prescribed in this bill, then the only other course to be pursued is to delegate to a commission the power to fix just and reasonable rates and then report its proceedings to Congress for approval.

This would not be practicable, for Congress could not approve every rate fixed by the Commission, and its approval would generally be of but little value on account of lack of definite information. Justice Brewer, in the recent Michigan tax case, said that the duty of local assessors was to act *according to their judgments* in respect to local taxes committed to their charge. That when they had finished their action, it must be assumed to have been taken in a conscientious discharge of the duties assumed. If the legislature should be convened after they had finished their action, and approve their acts, no question could be raised as to its validity. He asks the question whether it is any the less a legislative determination that the legislature assumes that the various local officials will discharge their duties honestly and fairly. He asks why is it necessary that the legislature be convened to add its formal approval of the integrity of the action of the local officers. So in this case, it may be assumed that when Congress fixes the standard of rates—something that must be just and reasonable—and then confides to a commission the duty of ascertaining the facts and applying the standard, it must be assumed that the commission will exercise an honest judgment and discretion, and that judgment will not be revised or reviewed by the courts if the commission acts within the scope of its authority and does not fix a maximum rate that is so low that it does not afford a fair return on the property employed. If the commission acts beyond the scope of its authority under the law or fixes a rate that does not afford just compensation, then the courts will restrain its action at the suit of anyone that has been injured by its orders.

The bill under consideration, either with or without the amendment of the Senator from Iowa [Mr. ALLISON], does not prevent a court from inquiring into the question whether an order made by the Commission takes the property of the carrier or the shipper without just compensation. It recognizes the right of review in the courts, but does not enlarge or restrict the present jurisdiction of the court. Unless this jurisdiction is enlarged by an amendment, the courts will only consider whether the Commission acted within the authority of the law or whether the rate is so high as to take the property of the shipper, or so low as to take the property of the carrier, without just compensation. The courts will not attempt to decide whether the rate is just and reasonable as between the shipper and the carrier. They will only determine the question of just compensation. If Congress confides to the Commission the duty of making a rate that is just and reasonable as be-

tween the shipper and carrier, in performing that duty the Commission must exercise its discretion and judgment. If it does not abuse its discretion and makes a rate that is so high that it takes the property of the shipper or so low that it takes the property of the carrier without just compensation, then the courts will not disturb the rate on review, unless there is a provision placed in this bill authorizing the courts to ascertain whether the rate is just and reasonable. If this is done and the courts assume this duty, then there is no necessity for having the Commission fix the rate. If they do not assume it, then the whole law may be declared invalid. Section 15, of the bill, as it passed the House, provides that when, in the *opinion* of the Commission the rates of a carrier are unjust or unreasonable, then it shall determine and prescribe what will, *in its judgment*, be a just and reasonable rate. These words evidently mean that Congress intends that the Commission shall exercise its judgment and discretion, and if so, "its acts within the limits of that discretion are not subject to review," quoting Judge Brewer in the case above referred to.

The amendment proposed by the Senator from Iowa [Mr. ALLISON], which provides that the United States circuit courts shall have jurisdiction to hear and determine suits against the Commission, makes only clear and definite what I believe to be in the bill as it passed the House of Representatives. I believe that, Congress having clearly imposed a duty upon the Commission to determine and prescribe what is a just and reasonable rate, the courts will not revise or set aside its decision, except under the conditions that I have heretofore referred to. The purpose of the amendment is to make clear by an affirmative statement what is now in the bill. The courts will now inquire whether the rate is extortionate or confiscatory, but the question whether it is a just and reasonable rate is left for the Commission to determine, and the courts will not modify or revise the discretion of the Commission.

It must not be forgotten that the opponents of this bill have contended that, without a specific amendment showing that Congress intended the courts should have jurisdiction to hear and determine the *reasonableness* and *justness* of a rate, they will only determine whether the rate is extortionate or confiscatory. In order to interfere with the determination of the Commission, an amendment must be placed in this bill enlarging the jurisdiction of the courts. This the amendment of the Senator from Iowa does not attempt to do. The opponents of this measure have abandoned their efforts to put into it a court-review amendment that will transfer the whole controversy to the courts. Under this amendment the courts will only consider the two questions specifically designated in my amendment—whether the Commission has exceeded its authority and whether the constitutional rights of anyone have been invaded.

Those who are in favor of this legislation will be successful if the amendment of the Senator from Iowa is adopted, or if the bill is passed without a specific amendment providing for review by the courts.

The VICE-PRESIDENT. The Chair informs the Senator from Kansas that his time has expired.

Mr. McCUMBER. Mr. President, I intend to vote for the Allison amendment, which I believe represents the wishes of the friends of this bill not only in the Senate, but also that it has the concurrence of the President, who has shown himself to be friendly to the bill. In voting for this amendment, however, I shall vote for it upon my own construction of what it means, and not upon the construction that may be given to it by any other Senator. My construction I can place in a very few words. I do not need to go outside of the bill itself to determine what that proper construction shall be. On page 3 of this bill it is provided, in line 14:

> All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable.

Mr. President, that is the standard that is laid down by Congress—the primary power to fix rates to guide the Interstate Commerce Commission. That permission can not go either one side or the other of that standard. They are limited; they are bounded by it.

Now, if we will turn a little further in the bill, we will find that the language is somewhat different on page 10, where the Commission is required to fix the standard, because it says, on line 19, after a hearing the Commission has then the power—

> to determine and prescribe what will, in its judgment, be the just and reasonable and fairly remunerative rate or rates, charge or charges, to be thereafter observed, etc.

The only difference between those two propositions is that in this one the words "in its judgment" are inserted. Those words, however, can not control the first proposition, because Congress has no power to confer upon the Interstate Commerce Commission the right to determine, in its own judgment, without Congress fixing the standard what the rate shall be. Otherwise, it would be a clear delegation of legislative power. So we are back to the main proposition that the standard must be whether the rates are just and reasonable.

When we come to the Allison amendment upon the venue, we find this:

> The venue of suits brought in any of the circuit courts of the United States against the Commission to enjoin, set aside, annul, or suspend any order or requirement of the Commission shall be, etc.

And the closing words:

> And jurisdiction to hear and determine such suits is hereby vested in such courts.

Jurisdiction to hear and determine what? We confer upon the Commission the power to fix reasonable rates. What is reviewed, then? The question of whether or not the Commission has in its fixing of rates measured up to the standard that is fixed by Congress is reviewed, and that is the only thing, outside of the questions, which, of course, always may arise, as to whether or not their rates are so low that it would be confiscation of the property and subject to the restriction of the Constitution.

So, Mr. President, if the Commission should fix, under my construction, a rate which, we will say, grants but 1 per cent upon the investment—1 per cent on the net returns—I believe that under this construction the court would say, not whether that would be a destruction of the property but simply whether or not the rate would be just and reasonable. For my part, I believe that it ought to have that power. On the other hand, if it should fix a rate which would be 15 or 20 per cent, then, I believe, the court ought to have the power, upon a suit brought by the shipper himself, to reduce it within this standard. That is the reason I vote for this amendment, because it raises but that one single question of justness and reasonableness; and justness and reasonableness, under my construction, mean just compensation.

Mr. RAYNER. Mr. President——

The VICE-PRESIDENT. Does the Senator from North Dakota yield to the Senator from Maryland?

Mr. McCUMBER. I yield.

Mr. RAYNER. Mr. President, does the Senator from North Dakota, then, believe that this amendment is broader than the original amendment offered by the Senator from Kansas [Mr. LONG]?

Mr. McCUMBER. I am inclined to think that, even under the original amendment offered by the Senator from Kansas, the courts could litigate the same thing, because we have fixed the standard, and the Commission is bound to follow that standard. I do not think that any amendment which has been offered changes that standard or the requirement of the Commission to make its rates in harmony with that particular standard.

Mr. President, that is about all that I have to say on the subject. I simply wanted to say to the Senate that I was going to vote for this amendment upon my own construction of what it meant. Though others might consider that it was broader or that it was narrower, I did not intend to bind myself to follow either of those constructions by my vote.

Mr. BACON. Mr. President——

The VICE-PRESIDENT. Does the Senator from North Dakota yield to the Senator from Georgia?

Mr. McCUMBER. I yield.

Mr. BACON. I should like to inquire of the Senator whether he considers the amendment offered by the Senator from Iowa [Mr. ALLISON] as one which could by any additional language be made any broader than it is in the matter of review?

Mr. McCUMBER. Oh, I think it possibly could be made broader, but if we made it broader to such an extent that the court would be permitted to substitute its own judgment as to what would be a just and reasonable rate for the judgment of the Commission, it would be clearly unconstitutional, because it would be fixing rates by the court, and we could grant no authority to the court to fix rates.

Mr. BACON. If the Senator will pardon me, he will recall that the amendment proposes to give the right of review, to enjoin, or set aside any order or any requirement. Now, I wish the Senator would accommodate me by suggesting what words can be used which would broaden that scope.

Mr. McCUMBER. There are other requirements than that of fixing rates. We have fixed a standard upon the question of rates——

Mr. BACON. The Senator will pardon me——

Mr. McCUMBER. That is a standard of justness and reasonableness.

Mr. BACON. If the Senator will pardon me, this amend-

ment does not limit it to an order or a requirement fixing rates, but it is any order or any requirement made by the Commission.

Mr. McCUMBER. I understand.

Mr. BACON. As a matter of curiosity, I should like to know if there is any other word in the English language which can be added to make that any broader than it is.

Mr. McCUMBER. We are speaking now of the reasonableness of rates and the construction that is to be given to this section as to whether or not it increases or enlarges the power of the courts, so that they can determine anything further than the question of the reasonableness and justness of rates. In reference to hundreds of other orders, no such question would necessarily arise. There might be an order requiring them to place in a spur; there might be an order requiring them to do many other things where the question of the justness or the reasonableness of it is not the standard; and where that is not the standard, as in the case of rates, then, of course, the decision, in my opinion, of the Commission would be conclusive unless it went so far as to be contrary to the constitutional provision.

Mr. BACON. I am speaking not of the construction the Senator from North Dakota has put upon the words, but I have asked him as a scholar to give me a single word out of the entire dictionary, which he can add to the words "any order or requirement," which will broaden the scope of these words—"any order or requirement of the Commission" is the language of the amendment. Now, out of the entire lexicon, will the Senator give me a word which will broaden the scope covered by those words?

Mr. McCUMBER. I do not think we can broaden the scope as to what may be considered. The court may consider any of those orders.

Mr. BACON. I am speaking about the language of the amendment, and I ask, can the Senator suggest any words, or any single word, in the English language, that would broaden the scope covered by the words "any order or requirement of the Commission?"

Mr. McCUMBER. I do not know that I entirely comprehend what the Senator is aiming at. He can probably make himself clear by an illustration, and then I will answer.

Mr. BACON. The proposed amendment gives to the courts the jurisdiction to enjoin or set aside any order or requirement made by the Commission. Now, I want to know if, in the opinion of the Senator, there is any word in the English language which can broaden the scope of the jurisdiction which those words would give to the courts if the amendment is adopted? I am not talking about the construction of the Senator, but I am talking about the words.

Mr. McCUMBER. Undoubtedly a set of words could be used, but I do not say that any one single word could broaden the jurisdiction.

Mr. BACON. Any one will do.

Mr. McCUMBER. I have tried to make plain to the Senator my contention that in the rehearing upon any other orders, except the orders to determine the reasonableness of a rate, there must be some interference with the constitutional protection of property rights; and, if there is none, then, under this amendment, I do not for a moment concede that the courts could interfere with it.

Mr. BACON. I will ask the Senator another question, then, with his permission, of course.

Mr. McCUMBER. Certainly.

Mr. BACON. Does the Senator think that the scope of the jurisdiction which is conferred by this proposed amendment can, by any other words, be made any other than those words make it?

Mr. McCUMBER. I have stated that I thought it could. I have answered the Senator several times.

Mr. BACON. I hope the Senator will suggest another.

Mr. McCUMBER. I am not taking the time now to reformulate this section for the benefit of the Senator so that it may be made to express more. I conceive that it can be made to express more than it expresses now, but I insist that, in so far as the reasonableness of rates is concerned, if it is made broader than it is now it may be subject to the constitutional inhibition.

Mr. FULTON. Mr. President——

The VICE-PRESIDENT. Does the Senator from North Dakota yield to the Senator from Oregon?

Mr. McCUMBER. Certainly.

Mr. FULTON. I should like to suggest, Mr. President, that if these words were inserted, "and in the exercise of such jurisdiction the court is authorized to review the discretion exercised by the Commission," it would open up an immensely wider field. Whether or not the courts would exercise the jurisdiction, certainly that language would be broader.

Mr. McCUMBER. Mr. President, there can be no question about that. The court can review the discretion of the Commission only to the extent of ascertaining whether or not in the exercise of that discretion it has measured up to the standard that is prescribed by the bill itself.

Mr. LONG. Mr. President——

Mr. CLAY. Mr. President, will the Senator from North Dakota allow me to ask him a question?

The VICE-PRESIDENT. The time of the Senator from North Dakota has expired.

Mr. McCUMBER. I am obliged to yield.

Mr. DANIEL. Mr. President, the Senator from North Dakota [Mr. McCUMBER] has shown plainly that what is designed by this amendment is to carry all of the transactions of the Interstate Commerce Commission and their judgment and discretion in all the details of this bill to the Supreme Court, utterly ignoring that the only ground on which the review by the Supreme Court has been predicated by it is the violation of the Constitution in the fifth amendment, where the Constitution applies solely to the States in the fourteenth amendment. In fact, Mr. President, the Supreme Court has said time and again and over and over that it is no part of its function either to prescribe what is a reasonable rate—which it will never do—or to review a rate on the ground that it was unreasonable, even though, with the same testimony before them, they were to think that another rate would be more reasonable than the one fixed.

In the remarks which I had the honor to make, and which I do not intend to repeat, I went over this ground with some fullness and was forced to take that ground by a careful perusal of the decisions of the Supreme Court of the United States. Mr. Justice Harlan said in one of those cases to which prominence has been justly given in this debate:

> But it should also be remembered that the judiciary ought not to interfere with the collection of rates established under legislative sanction unless they are so plainly and palpably unreasonable as to make their enforcement equivalent to the taking of property for public use without such compensation as under all the circumstances is just to both the owner and the public—that is, judicial interference should never occur unless the case presents clearly and beyond all doubt such a flagrant attack upon the rights of property under the guise of regulations as to compel the court to say that the rates prescribed will necessarily have the effect to deny just compensation for private property taken for the public use.

This was said in the San Diego Land Company case (174 U. S.), and the cases which Justice Harlan cites, which might be read to the same effect, are the Chicago and Grand Trunk Railway Company *v.* Wellman (143 U. S., pp. 339–344), Reagan *v.* Farmers' Loan and Trust Company (154 U. S., pp. 362–399), Smyth *v.* Ames (167 U. S.), and Henderson Bridge Company *v.* Henderson City (173 U. S.). A half dozen other cases might also be cited.

Mr. President, there is no tenet of our Federal law so clearly defined or more frequently maintained and illustrated by the decisions of the United States Supreme Court than that for which the Senator from Maryland [Mr. RAYNER] contends. The defense by the Senator from North Dakota [Mr. McCUMBER] completely shows that the interpretation of it by the Senator from Maryland is correct and that it is attempted here to carry up to the higher tribunals and to the Supreme Court of the United States those elements of this law which it has shown time and again, and luminously shown, belong to the administrative department of the Government and should be left to its administrative officers, just as it is left to the Secretary of State and to every other Cabinet minister, and sometimes to subordinate officers of less dignity and less weight of character, in such concerns.

To my mind the Senate would make a great mistake if it were to form a plan, under the guise of protection of property, which has no more relation to the protection of property than all the administrative acts of the United States which compass civil liberty, titles to land, pensions, and property rights in all their infinite varieties.

I shall, therefore, vote—and feel that I ought to vote under the repudiation of the courts of such ideas as have now been interpolated in this bill—for the amendment of the Senator from Maryland.

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Maryland [Mr. RAYNER] to the amendment of the Senator from Iowa [Mr. ALLISON].

Mr. SIMMONS. Mr. President, I shall only detain the Senate for a few moments. Some time in March I offered a proposed amendment to this bill, which embodied several distinct propo-

sitions. One of those propositions provided for what we have termed here a "narrow" or a "limited" court review. I shall not offer that part of my amendment, because the amendment offered by the Senator from Maryland [Mr. RAYNER], upon which we voted yesterday, embraced substantially the same proposition; but, Mr. President, in view of the fact, as stated by the Senator from Oregon [Mr. FULTON], that there is a misunderstanding in the country as to the exact line of cleavage here in the Senate upon this question of court review and in view of the fact that Senators on the other side of the Chamber who have been supposed to be in favor of a limited court review have suddenly changed their position upon that question and have advanced here in justification of their present position a legal proposition which has not been discussed up to this time, I think the time which the Senate has given to-day to the discussion of this question has been time well spent.

Most of the discussion upon this measure up to the present time has been upon the proposition of the Senator from Texas [Mr. BAILEY] with reference to the suspension by the courts of the rate fixed by the Commission. There has been but little discussion of the question of court review.

Mr. President, I want to state my position with reference to this question of court review, because I have found what the Senator from Oregon has just said with reference to a misunderstanding on the part of the people as to the line of cleavage between Senators on this question is true from personal contact with people in my own State on the occasion of a recent visit to that State. No Senator on this side of the Chamber has at any time insisted that the courts should not have the right under any circumstances to review an order of the Commission. Some have insisted that the courts had the right of review in certain cases, whether there was any express provision in the act conferring that power or not; but every Senator on this side of the Chamber who has expressed himself upon this subject has taken the position that if the courts did not have inherently and without express provision in the bill power to review questions which involved the constitutional rights of the carrier or the shipper that power ought to be conferred upon them by an express declaration. Mr. President, while common carriers are charged with a public duty, and therefore are subject to governmental supervision, the ownership of railroads is private property, and is just as much entitled to the protection guaranteed by the fifth amendment to the Constitution as any other private property, and I would not myself consciously cast a vote that would in any way impair that right. This, I think, is the position taken by every Senator on this side who has addressed himself to this phase of the subject.

The Supreme Court has decided—and that decision meets the approval of my judgment—that if Government, whether national or State, shall fix a rate which is so low as to deprive the carrier of its property without just compensation, that would be an unlawful rate; that such a rate would violate the fifth amendment to the Constitution, and that the courts would not only restrain such rate, but set it aside as null and void. It is also true that if the Commission, acting for Congress—and the Commission is nothing more than the agent of Congress in the matter of fixing rates—shall fix a rate which is so low as to deprive the carrier of his property without just compensation the courts would restrain such rate and set it aside.

Not only that, Mr. President, but if the Congress or the Commission, performing the functions of Congress and acting as its agent, shall fix a rate so unreasonably high as to be extortionate, it is probable that the shipper would have a right to complain, and that the courts would declare such a rate unconstitutional, because it would to a certain extent take the property of the shipper without just compensation. In both of these cases the rate, whether fixed by Congress directly or by the Commission acting as its agent, would violate the constitutional guaranty of the fifth amendment, and no action of Congress could deprive the courts of the power to review such a rate.

Again, if the Commission should exceed the jurisdiction conferred upon it by the interstate-commerce act and by this act, if it should make an order which it is not authorized to make under the laws of its creation, if it should attempt to exercise a power not conferred upon it by Congress, such act or order would be ultra vires and unlawful, and the courts would have the power to review and set it aside, despite the action of even prohibition of Congress. But, Mr. President, there is a broad gulf, so to speak, between a rate that is confiscatorily low, and therefore unconstitutional, and a rate which is extortionately high, and therefore unconstitutional. And every rate prescribed by the Commission within these limits, between these two boundary lines, is a lawful and a constitutional rate. That rate ought to stand, and no court ought to have power or jurisdiction to review, modify, set it aside, or suspend its operation for a single day, hour, or minute.

Why? Because fixing a rate is a legislative function. If it be fixed by Congress, it is a purely legislative function; if by the Commission, acting under a standard and rule prescribed by Congress, it is a quasi legislative function.

The courts have no power, and none should be given them, to review an act of Congress or of the Commission acting for it under a standard prescribed by it which does not violate the Constitution and is not ultra vires. The courts have no more power to review a rate so fixed than they have to review a law passed by Congress in the lawful exercise of its lawful powers. If the Congress shall pass an act which is unconstitutional, the courts have a right to set it aside, but if the act be constitutional, the court has no power to inquire whether that act proceeded upon lines of wise public policy. It has no power to inquire and determine whether that act is sound in policy or in principle. So when the Commission fixes a lawful rate as distinguished from an unconstitutional rate, the courts have no right to review that rate. They have no right to inquire into and settle the question of whether such rate is fixed in accordance with wise policy or sound principle.

Mr. CARTER. Mr. President——

The VICE-PRESIDENT. Does the Senator from North Carolina yield to the Senator from Montana?

Mr. SIMMONS. I should like very much to yield, but I have much I wish to say, and under the fifteen-minute rule I will not have time to say it if I yield. The Senator can have the floor when my time expires.

Mr. President, after we have discussed here for three months the question of limited and of broad court review, suddenly the gentlemen on the other side of the Chamber, who have agreed with us in our position upon that proposition, have changed front and given their sanction to an amendment which I think, and which every lawyer is bound to think, is as broad a court review as human language can express. When charged with inconsistency and surrender they attempt to justify their present position by a contention as to the statutory powers of the courts which has not been asserted or declared during the course of this debate by a single one of them until yesterday, and which is utterly inconsistent with their former position and contentions.

The amendment introduced by the Senator from Iowa changes materially the provisions in the bill as it came from the House. The bill as it came from the House provided for the venue of suits to set aside, annul or enjoin the orders and requirements of the Commission. It went no further than to say that any action which the court might entertain, under the general law as it now exists, should be brought within a certain district. It fixed the venue of such suits and stopped there. That is as far as the original bill went.

The VICE-PRESIDENT rapped with his gavel.

Mr. SIMMONS. Has my time expired?

The VICE-PRESIDENT. The Senator's time has expired.

Mr. SIMMONS. I shall pursue the course of my distinguished colleague from Maryland, and shall try to finish this speech upon some other amendment.

Mr. CARTER. Mr. President, I would not attempt to make a contribution to this debate at this late hour were it not for the manner in which the discussion on this particular amendment was initiated or brought into the Chamber. I feel that the time for action has arrived, and that the period for discussion has substantially closed. But the Senator from Texas [Mr. BAILEY] and likewise the Senator from Maryland [Mr. RAYNER], precipitating a discussion on this amendment or one similar, thought proper to reflect upon the attitude of the President of the United States, whose relation to this legislation is only of the character contemplated by the Constitution. The President might, in the strict discharge of his duty, decline to exchange views with any member of the Senate calling at the Executive offices for the purpose of suggesting or considering any part or portion of this or any other pending legislation. It so happens, however, that the President is deeply interested in the success of this legislation. Before his nomination, while a candidate for the Presidency, I think the present Chief Executive gave the most heroic and courageous exhibition on a public question, in dealing with this subject, to be found in our political annals within the last forty years of our political life. The statesmen of the country have been somewhat timid in assailing the majestic and supposedly invincible railroad power. A few men in this Chamber have from time to time uttered sentiments contrary to the generally accepted theory upon which the laws were being administered. They had found from time to time political graves, and they at least believed in many

instances that their political extinction was due to no considerable extent to the temerity they displayed in suggesting that reasonable regulation of railroad rates should be provided by Congress.

The Senator from Texas and the Senator from Maryland vouchsafed to us the opinions entertained by them, respectively, that the President had finally abandoned the bill for which he stood so firmly in the beginning, and this charge is hypothecated upon the proposed amendment to section 5 of the bill, or section 16 of the interstate-commerce act, as proposed to be amended by this bill.

Permit me, for the purpose of making the RECORD explicit, to read the text of the bill to which the amendment is directed as it was passed by the House of Representatives and transmitted to this body:

> The venue of suits brought in any of the circuit courts of the United States to enjoin, set aside, annul, or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office.

Now I will ask the Senators if it is true that anyone supporting that proposition had a mental reservation to the effect that the courts would have no jurisdiction to try or determine the subjects-matter referred to in the section? If that mental reservation existed in the light of the language quoted, then I submit that it was a dishonest reservation; that anyone willing to deal fairly and squarely and honestly and above board would only construe that part of the section as conferring jurisdiction on the courts, and only those, if any there be, willing to cheat through language of indirection could possibly otherwise construe it. It was insisted, however, that there was an ambiguity as to the jurisdiction. In every public utterance throughout this country and in messages to Congress the President had made it clearly manifest that he believed in the jurisdiction of the courts extending over the acts of the Commission; and to him it was obvious that if this bill did not provide for court jurisdiction in the language I have read, it should be made to so provide. And therefore the amendment offered by the Senator from Iowa is but intended to clear up an ambiguity in the bill as it came from the House.

No one familiar with the President's record upon this railroad rate legislation, or upon any other public question, I assume, can justly charge him with either cowardice or shiftiness. There are some who charge that he is too bold and fearless and outspoken, but for the first time is it intimated by the Senators from Texas and Maryland that he is prepared to, or did make, an abject surrender. In consenting to this amendment, and I believe it has his full approval, the President merely made the bill honest and square, made it to clearly express what I believe all Senators understood it to contain, with the exception of those few who, in a hypercritical mood, questioned the sufficiency of the language to clearly convey court jurisdiction.

Now, Mr. President, as to the critics. I say the President's record upon this and every other public question he has touched is a record of courage unmatched, certainly unexcelled. The Senator from Maryland, who thought proper to assail the President as having abjectly surrendered, was an honored member of the Committee on Interstate and Foreign Commerce in the House of Representatives when Theodore Roosevelt was a young ranchman riding the range with the cowboys in North Dakota. For six years he was a member of the House of Representatives. He has been a respected member of this body for quite a period of time, and his enthusiasm upon this question led me to ask what he had offered in the way of contribution to check the mighty power of the railways of this country in all these years. I find upon inquiry at the document room that this is the sum total of the legislation offered by the Senator from Maryland to curb the railroad power up to the opening of the present Congress. It will be found that in the bill H. R. 3291, Fifty-third Congress, second session, the Senator from Maryland presented this proviso as an amendment of the interstate-commerce act:

> *Provided further*, That nothing in this act shall prevent the issuance of joint interchangeable 5,000-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of 1,000 or more miles.

That is the record of the critic from Maryland.

Mr. RAYNER. Do you mean I offered that in the Senate?

Mr. CARTER. No; it was offered in the Fifty-third Congress, in the House of Representatives.

Mr. RAYNER. How far back are you going now?

Mr. CARTER. Over the whole record.

Mr. RAYNER. You are going back to what I did fifteen years ago?

Mr. CARTER. The Senator from Texas, in all candor, stands in no better position to criticise the President. He was a leader of his party, and a superb leader he made. He is a gifted man, with mighty resources. He was for ten years a member of the House of Representatives before Theodore Roosevelt reached a place where he could exercise any influence on national legislation. And yet the Senator from Texas, in all the ten years of his superb devotion to the people on the railroad question, only introduced, by request, on the 28th day of February, 1894, a bill providing that scalpers' tickets should not be sold throughout the country, and providing a fine of $5,000 to be applied to any man who sold a ticket he had purchased, unless he had first offered it back to the railroad company.

I do submit in all candor that the Senators should have desisted from any very drastic criticism of the President of the United States on railroad rate records. I do not, however, blame the Senators for this paucity of production. They belong to a party of negation. The Senators are not expected, from that standpoint, to engage in constructive legislation, and I am not surprised that at this stage of the proceedings, when the Senators perceive that we are about to crystallize something into law, they are suddenly seized with a chill. The talking is about to be concluded and action is about to begin.

The Senator vouchsafed us some information concerning the component parts of our party organization, and referred to the Senator from Rhode Island [Mr. ALDRICH] as having come into camp or the camp having gone to the Senator—I do not know in what particular form. The fact that we get together is due to a certain clearly defined basic principle. The people who believe in doing things, who believe in reconciling differences, who believe in results, are on this side of the Chamber. The people who enjoy bickerings and continuous strife and ceaseless controversy naturally belong to the other side, and some of them enjoy the speeches made by both the Senator from Maryland and the Senator from Texas. We do not pretend to have such orators upon this side. So in our humble way we proceed to achieve things, and we stand responsible for results when results are attained.

Mr. President, I say this in a kindly spirit, because no one respects the eminent Senator from Texas more than I do. No one has higher regard for the superb abilities of the Senator from Maryland than I have. But I do think that when they establish themselves as critics of the Republican party, and particularly of the President of the United States, they should be backed by better records than either has presented upon this question.

Mr. BAILEY. Mr. President, the ebullition which the Senate has just witnessed is due entirely to the fact that the Senator from Maryland [Mr. RAYNER] forgot to mention the Senator from Montana [Mr. CARTER] yesterday as among the President's special ambassadors to the Senate. And the Senator from Montana was afraid that this debate would close without the attention of the country being called to the fact that he had borne some, though an inconspicuous part, in the reconciliation which has been brought about among Republican Senators.

When the Senator talks about my record he ought to know—of course he does not know many things, but he has searched the RECORD enough to have learned—that during the ten years I served in the House of Representatives my party was in a majority only the first four years of my service there. In the Congress to which he alludes as having passed under my leadership he must know that the Democrats were in the minority, and from that time to this I have had the misfortune—but the country has suffered the greater misfortune—of having a Republican majority, first in the House and then in the Senate. And so, if I had introduced a bill to regulate the railroads, I would have been performing an act of mere buncombe, such as that performed by the Senator from Montana this morning.

The Senator from Montana says that I assailed the President because he had changed his position on the character of a court review. I said nothing about the President's position on that question. In the short speech which I made in the beginning of the session yesterday I did say that the President had changed his position with reference to a suspension of rates pending a reversal by the court, and I did call attention to the fact that the President had abandoned his first demand for an absolute rate and had accepted the compromise of a maximum rate. But I said nothing about a change in his attitude toward the court review; and in a subsequent speech which I made in reply to the honorable Senator from Iowa [Mr. ALLISON] I did not refer to the President's position in that respect. Therefore, when the Senator from Montana is lecturing other people about misrepresenting the President he ought to be careful not to fall within his own condemnation.

The Senator from Montana in his enthusiasm to be recognized as a friend, a defender, an ambassador, as it were, of the President, declares that in the face of the last Presidential election the President gave the country an exhibition of match-

less courage in defying the tremendous power of the railroads. Has the Senator from Montana examined the record on that question, as he did the record of the Senator from Maryland and myself? What will the Senate say when I tell the Senator from Montana that in his messages of 1902 and 1903 the President was as silent as the grave upon the question of regulating the railroads; that standing in the presence of the American people, pending the great contest of 1904, he spoke never a word in its favor, either in his letter of acceptance or in his speech of acceptance.

Let me put it in the RECORD. In the President's message of 1901 he said:

The act should be amended.

The interstate-commerce act.

The railway is a public servant. Its rates should be just to and open to all shippers alike.

In his message of 1902 he said nothing at all. In his message of 1903 he was still silent upon the subject, and only after his election in 1904 did he challenge the railroad power to mortal combat. Did the Senator from Montana know that when he declared that the President had exhibited a marvelous courage in defying the powerful influence of the railroads prior to his election?

Mr. CARTER. Will the Senator from Texas yield?

Mr. BAILEY. I do.

Mr. CARTER. Does not the Senator from Texas know that in a public address, delivered in the city of Minneapolis, before his nomination, to which the Senator refers, the President of the United States had, in clear, distinct, and unequivocal terms, announced his position upon the subject, and likewise upon necessary antitrust prosecutions and legislation?

Mr. BAILEY. I am free to say that I did not know the President had discussed the railroad question in his speech at Minneapolis. I have examined his public messages to Congress; I have examined his speech of acceptance; I have examined his letter of acceptance, and I have found no word in them. I will tell the Senator from Montana more. But first let me say, Mr. President, that this turn in the debate is not of my choosing. I have studiously refrained from speaking any bitter word against the President during this prolonged struggle. I have felt that all the friends of efficient legislation on this subject ought to spare each other from attack and bitter speech, and I have borne patiently some things of which I had a right to complain rather than create divisions and dissensions among the friends of this bill.

Let me tell the Senator from Montana, further, that in the summer of 1904, before the President had spoken his speech or written his letter of acceptance, his secretary, in reply to a letter addressed to President Roosevelt by the publication known as "Freight," said to the editor of that paper that the President in his letter or speech of acceptance would speak out on the railroad question, and speak in a manner entirely satisfactory to that editor. And yet, sir, the Senator will search in vain both the letter of acceptance and the speech of acceptance for a word to redeem the promise of the President's secretary.

I do not say the President put it in his message and then when his astute political advisers told him that the railroads would not contribute to his campaign that he cut it out. I will not say that, although there are many men uncharitable enough to say it. I only put before the Senate and the country the fact that his secretary said the President would speak on it and that he did not speak on it. Perhaps those insurance companies which were contributing the trust funds of widows and orphans to secure his election owned so many of these railroad bonds that they deterred, not the President, but the President's advisers, from proclaiming his hostility against the railroads immediately preceding the election.

Mr. President, I love a brave man; I love a fighter; and the President of the United States is both—on occasions; but he can yield with as much alacrity as any man who ever went to battle, civic or political. That he fights furiously at first I grant you, but he seems to have no endurance in these political contests. Only a short time ago he was going to revise the tariff, but his friends called him off. When that great voice was filling the nation with a demand for tariff revision, suddenly it sank into the gentleness and sweetness of a whisper. Next he was going to have the railroads regulated, and it was announced that Congress would be convened in extraordinary session to deal with it; but the great leaders assembled with the President, prayed with him a little while, and no call was issued for an extraordinary session of Congress. He waited until the regular session, and five months of that has elapsed and still no legislation.

If the President were the heroic figure which the Senator from Montana would have us believe him, you know what he would have done. He would have summoned these Republican leaders of the House and the Senate to a conference, and he would have said to them: "Gentlemen, I am not talking to you now as President of the United States; I am talking to you as Theodore Roosevelt, a Republican, and I am talking to you as Republicans. I want to tell you that I happen to know that unless you pass a good bill the President of the United States intends to veto it." They would then have passed a bill fulfilling in some degree the reasonable expectations of our people. If Congress had failed to do that, and he had vetoed the bill they passed and then convened them in extraordinary session to pass a good one, he would have written his name with the names of Jefferson and Jackson and Lincoln among his illustrious predecessors. But he did not deal with the situation in that firm way, and let us have no more talk in the Senate and in the country about this iron man. He is clay, and very common clay.

Mr. ALDRICH. Will the Senator from Texas permit me to ask him a question?

Mr. BAILEY. I will.

Mr. ALDRICH. Does the Senator think that the bill which passed the House of Representatives and received the unanimous vote of the Republicans in that body is an effective piece of legislation?

Mr. BAILEY. I do not, and I will go further and say it is not as good as that same bill will be when it passes this body. But both of them together are not as good as they ought to be.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Maryland [Mr. RAYNER] to the amendment.

The amendment to the amendment was rejected.

The VICE-PRESIDENT. The question recurs on the amendment proposed by the Senator from Illinois [Mr. CULLOM]. [Putting the question.] The ayes have it.

Mr. TILLMAN. Mr. President, I addressed myself to you before you announced the vote, and I notified the Chair last night that there was a verbal change in the amendment I wished to make.

The VICE-PRESIDENT. The Chair did not understand the Senator from South Carolina to rise to this question. The amendment is open.

Mr. TILLMAN. I suggest that the amendment proposed by the Senator from Illinois, originated by the Senator from Iowa, be changed so as to insert at the beginning in regard to the suits against carriers these words in lieu of the words that are now in the amendment:

In case such order or requirement affects two or more carriers the suit may be brought by them jointly in the district wherein the principal operating office of either is situated.

It prevents two suits where there is a joint rate between two roads by having one against both in the district where the principal operating office of either is situated. It does not alter in any sense the meaning or purport of the amendment; it simplifies the procedure; and I hope the Senator from Iowa will accept it.

Mr. ALLISON. I hope the Senator will indicate what it proposes and how it will read.

Mr. TILLMAN. "In case such order or requirement"——

Mr. CULLOM. Where is it to come in?

Mr. TILLMAN. In place of the language in the amendment now pending relating to this very same subject.

Mr. CULLOM. Where? Locate it so that we can turn to it.

The VICE-PRESIDENT. Will the Senator from South Carolina kindly state the page and line?

Mr. TILLMAN. I have it somewhere here, if I can find it.

Mr. ALLISON. Page 17, line 14, after the word "office."

Mr. TILLMAN. Yes; page 17, line 14, after the word "office."

The Allison amendment proposes the following:

And if the order or requirement has been made against two or more carriers then in the district where any one of said carriers has its principal operating office, etc.

The language I wish to substitute is:

In case such order or requirement affects two or more carriers the suit may be brought by them jointly in the district where the principal operating office of either is situated.

If there are joint rates between two roads——

Mr. ALLISON. I must confess I do not see the difference in phraseology in the Senator's amendment and the amendment pending:

And if the order or requirement has been made against two or more carriers then in the district where any one of said carriers has its principal operating office.

Mr. TILLMAN. Yes; but you do not include the joint rate,

and it requires a suit in each district where the two carriers are located, whereas the language I suggest is:

In case such order or requirement affects two or more carriers the suit may be brought by them jointly in the place wherein the principal operating office of either is situated.

In other words, you have one suit against two carriers, and you have that suit against each in the district where the principal operating office of either is situated. That is the purpose I have in view.

Mr. CULLOM. Those words are proposed to be inserted after the word "office," in the provision as it was introduced by myself for the Senator from Iowa. Is that what the Senator is trying to do?

Mr. TILLMAN. Yes; I am trying to substitute a provision by which instead of having two suits, one against one carrier in one district and another against another carrier in another district, there may be a joint suit against both in the districts wherein the principal operating office of either is situated. It is not very material. I am not insisting on it at all.

Mr. ALLISON. I think under the language as it stands that could be done.

Mr. TILLMAN. Very well; if the Senator from Iowa does not accept it, it is all right to me.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Illinois.

Mr. BAILEY. I understood the amendment had been agreed to.

The VICE-PRESIDENT. It has not been agreed to. It is still open to amendment.

Mr. BAILEY. I am not able quite to see the form in which it is presented. I wish to inquire if the entire amendment proposed by the Senator from Illinois [Mr. CULLOM] in behalf of the Senator from Iowa [Mr. ALLISON] is now before the Senate?

Mr. CULLOM. Only the one amendment we have been discussing lately.

Mr. BAILEY. And only those words in italics are now before the Senate?

Mr. CULLOM. So I understand.

Mr. BAILEY. I wanted to move to strike out the venue there, which is laid in the district where the carrier has its principal operating office, and substitute "the district from which the complaint comes or in which it originates," but if the entire proposition is not now before the Senate then that is improper.

The VICE-PRESIDENT. The Chair did not understand the suggestion of the Senator from Texas. The entire amendment of the Senator from Iowa is now pending.

Mr. BAILEY. Then I will ask the Chair the distinct question, Are lines from line 1 to the word "office, in line 6, on page 9, of the amendment proposed by the Senator from Illinois in behalf of the Senator from Iowa now before the Senate?

Mr. CULLOM. That amendment was adopted yesterday.

Mr. BAILEY. Not the whole amendment.

Mr. CULLOM. The amendment introduced consisted of several amendments, and the first amendments which were reached in the order of sections were disposed of up to and including the amendment on page 17 of the bill.

The VICE-PRESIDENT. The Chair does not have the text before him, but will have the Secretary again state the pending amendment, and then the Senator from Texas can determine whether his amendment will be in order at this time.

The SECRETARY. On page 17 of the printed bill, line 14, after the word "office," the last word in the line, strike out the period and insert a comma and insert the words:

And if the order or requirement has been made against two or more carriers——

Mr. BAILEY. That is far enough, Mr. President, to advise me that the part I want to amend is not the pending question.

Mr. BACON. Mr. President, I desire to offer an amendment. I have before me the printed amendment of the Senator from Iowa.

Mr. CULLOM. Has the amendment of the Senator from Iowa been acted upon?

The VICE-PRESIDENT. Not yet.

Mr. LODGE. Mr. President, I wish to make a parliamentary inquiry. Is there any amendment now pending to the amendment of the amendment of the Senator from Iowa?

The VICE-PRESIDENT. No; that has been withdrawn; but the Senator from Georgia is proposing an amendment to the amendment.

Mr. BACON. On page 317 of the compilation, line 12, where the amendment is found, I move to insert after the word "and" in the twelfth line these words:

Concerning orders and requirements not involving the exercise of discretion by the Commission.

So that it will read:

And concerning orders and requirements not involving the exercise of discretion by the Commission, and jurisdiction to hear and determine such suits is hereby vested in such courts.

The VICE-PRESIDENT. The Secretary will read the amendment to the amendment.

Mr. NELSON. I make the point of order that that is not an amendment to the pending amendment, but to a different paragraph of the bill.

Mr. BACON. I was unfortunate in expressing myself surely, because it is directly an insertion of words in the amendment offered by the Senator from Iowa, and it can not be anything else than an amendment to the amendment.

The VICE-PRESIDENT. The Secretary will state the proposed amendment to the amendment.

Mr. BACON. I will hand it to the Secretary.

The SECRETARY. In the proposed amendment of the Senator from Illinois, line 8 of the printed amendment, printed separately, after the word "any" and before the word "jurisdiction," insert the following:

Concerning orders and requirements not involving the exercise of discretion by the Commission.

So that, if amended, the amendment will read:

Then the venue shall be in the district where said carrier has its principal office, and concerning orders and requirements not involving the exercise of discretion by the Commission jurisdiction to hear and determine such suits is hereby vested in such courts.

Mr. BACON. Now, Mr. President, just a word. The discussion which we have had as to the meaning of the amendment has elicited from Senators repeatedly the expression of the opinion that the amendment means exactly what these words specify it shall mean. When the attention of Senators is called to the fact that the words found in the amendment proposed by the Senator from Iowa are of so broad a scope that no word can be found in the English language which can broaden that scope, Senators rejoin that the courts will construe it to mean what these words sought to be interpolated will express.

If the Senators are candid in that statement—if they mean what they say, if they are in earnest when they contend that this amendment will not give to the courts the right to review the act of the Commission in any particular in the making of rates or in any other order or requirement where such order or requirement is in the exercise of discretion—then, of course, they will vote for this amendment to the amendment.

Mr. President, I can see no reason why Senators would vote against this amendment, except that they do not agree with what has been said by Senators in that regard. The Senator from Iowa himself on yesterday said that if a question was brought before the court which involved an order or a requirement by the Commission in the exercise of its discretion, the court would undoubtedly refuse to review such act in making such order or requirement.

Mr. FULTON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Oregon?

Mr. BACON. I do.

Mr. FULTON. I ask the Senator if the amendment he has offered would not prohibit the court from inquiring into orders made by the Commission in order to ascertain whether or not the constitutional rights of a party had been invaded?

Mr. BACON. That is the first suggestion out of the many we have had in this debate that the question of constitutional right can possibly be raised, either directly or indirectly, in the exercise of any discretion.

Mr. FULTON. Very well; this is the point: The court has to inquire into the order made by the Commission. The Commission is supposed to make all orders in the exercise of its discretion, but it may abuse that discretion to the extent that it violates constitutional right. Now, the amendment offered by the Senator would prohibit the court from making inquiry in order to ascertain whether or not a constitutional right had been invaded.

Mr. BACON. By no means, Mr. President. If this section read simply that jurisdiction is given to the courts to hear, the contention of the Senator, while still not, I think, well founded, might be plausible; but it says "hear and determine;" in other words, to determine that it is wrong, to reverse it, to annul it; but if this amendment is adopted, while the court, of course, will inquire as to anything that is brought before it when it comes to determine upon it, if it finds it to be a matter of discretion, it will say "this is without our jurisdiction; we have no jurisdiction to determine that which rests within the discretion of the Commission."

Mr. FULTON. But they hear and determine that the discretion had not been abused; that the constitutional rights had not been invaded.

Mr. BACON. No; it would be outside their jurisdiction altogether.

Mr. President, this will test the sincerity of Senators. If they believe that it is the scope of the amendment to exclude from the jurisdiction of the courts the right to hear and determine questions which involve simply the exercise of discretion on the part of the Commission, they will of course vote for this amendment.

Mr. SPOONER. Will the Senator allow me to ask him a question?

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Wisconsin?

Mr. BACON. With pleasure.

Mr. SPOONER. Does the Senator think that the fixing of rates involves in no degree discretion?

Mr. BACON. The question as to whether or not it is just and reasonable has been determined by the courts repeatedly, as the Senator knows better than I do, because he is more familiar with this subject than I am, to be strictly a judicial question. So the question of the Senator can not have pertinency in this connection.

Mr. SPOONER. But the language of the bill is—I think it is dangerous language myself—that the Commission shall fix what in their judgment will be a reasonable rate.

Mr. BACON. I think that is dangerous language, and I would rather have it out.

Mr. SPOONER. Is the Senator absolutely certain that the language he employs in his amendment would not, if given any effect whatever, defeat the judicial-review provision?

Mr. BACON. I think it certainly would not. But, Mr. President, here is the plain issue. Here is an amendment offered by the Senator from Iowa which is absolutely without limitation, which is as broad as human language can make it, giving to the court the right to review every order or requirement made by the Commission; and when Senators are challenged by the fact that they have made such a review the reply is that it will not embrace a review of matters involving the exercise of discretion. I have simply put in words the language already uttered by Senators and ask that it may be incorporated in the bill, so that if what they say is correct it may not depend simply upon their understanding, but may be specified in the language of the act. That is the plain issue, Mr. President, and all the talking from now until the adjournment of this Congress could not make that which lies upon the surface any plainer than it is.

Mr. LONG. Mr. President, the amendment offered by the Senator from Georgia [Mr. BACON], would, in my opinion, render this bill unconstitutional. It provides that only orders and requirements not involving the exercise of discretion by the Commission can be investigated in the courts. By section 4 of this bill authority is given the Commission to prescribe and determine a rate which, in its judgment, is just and reasonable. In doing that the Commission must of necessity exercise its discretion, and if it exercises its discretion then under this amendment the order could not be reviewed by the court. The effect of the amendment would be to prohibit a review by the courts of practically all of the orders of the Commission——

Mr. BACON. If the Senator from Kansas will pardon me, I desire to say that I think the effect of this amendment will be practically to make the bill what it would have been if the amendment offered by the Senator from Kansas had been adhered to by him and persisted in by him and had been adopted. But as he has abandoned it I am trying to bring it back to the same position that he so continually represented himself as being in favor of here for several weeks.

Mr. FORAKER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Kansas yield to the Senator from Ohio?

Mr. LONG. Certainly.

Mr. FORAKER. I only wanted to ask the Senator what I did not understand by his statement, that the Commission must of necessity in making a rate exercise its discretion. Have we not created a standard by which the Commission is to be governed in the making of rates?

Mr. LONG. We have provided a standard, but the duty is imposed upon the Commission to exercise its judgment in determining and prescribing a rate according to that standard.

Mr. FORAKER. The point is one about which I think the Senator will not disagree with me. I only want to bring it out and put it in the RECORD that the standard which we have created, or will have created when this bill has become a law, namely, that rates shall be just and reasonable, is a standard that can not be conformed to except by the exercise of discretion and judgment on the part of the Commission. It would follow, of course, that the judgment of one Commission might differ from the judgment of another Commission or the judgment of one man might differ from the judgment of another man.

Mr. LONG. But the discretion exercised by the Commission would not be interfered with or revised by the court unless there was an abuse of the discretion, or unless the rate was fixed so low that it did not give a fair return to the carrier on the property employed in the service.

The Senator from Georgia says it is his intention to bring this question back to where it would be under my amendment. As I have already stated to the Senate, the action of the courts under my amendment or under the amendment of the Senator from Iowa would be exactly the same. They would take cognizance of judicial questions; they could not be prevented from considering such questions, but questions of policy or wisdom would not be considered by the courts under either of these amendments.

Mr. McCUMBER. Mr. President, may I ask the Senator a question?

Mr. LONG. Certainly.

Mr. McCUMBER. I will put the case directly to the Senator. Suppose the Commission finds that a net revenue of 3 per cent would be sufficient, and fix the rate accordingly, does the Senator then contend that the court could not hold that that 3 per cent was not a just and reasonable rate and did not measure up to the standard fixed for the Commission?

Mr. LONG. As a question of compensation?

Mr. McCUMBER. Would not the court have a right to set it aside upon that ground alone?

Mr. LONG. The question as to whether or not a given rate afforded just compensation would be a judicial question that the courts would determine for themselves, without regard to the determination of the Commission.

Mr. McCUMBER. Then the judgment of the court may set aside the discretion of the Commission if, in the judgment of the court, the discretion of the Commission does not measure up to the standard fixed by Congress?

Mr. LONG. To the standard fixed by the Constitution—of just compensation. The objection which I have to the amendment of the Senator from Georgia is that it attempts to prohibit the review of practically all of the orders made by the Commission. If an order is made in which it exercises discretion, under the amendment of the Senator from Georgia the courts would be prohibited from reviewing such an order; and that would clearly fall within the decision of the Supreme Court in the Minnesota Milk case (134 U. S., 459), in which the statute was declared unconstitutional because it was construed to prevent a review by the courts.

Mr. BACON. Will the Senator permit me to ask him a question?

Mr. LONG. Certainly.

Mr. BACON. I have stated that I have endeavored in this amendment to restore the status which was at least possible when the Senator presented his amendment. The Senator has not yet offered his amendment, nor has he withdrawn it. If some of us will offer it for him, will the Senator vote for it?

Mr. LONG. I discussed that question yesterday with the Senator from Maryland [Mr. RAYNER]. No one has yet presented my amendment. I will meet that question when it arises.

Mr. BACON. I will accommodate the Senator. I will present the amendment.

Mr. LONG. A short time ago, while interrupting the Senator from North Dakota [Mr. McCUMBER], the Senator from Georgia [Mr. BACON] wanted to know what language could be used that would broaden the review amendment offered by the Senator from Iowa [Mr. ALLISON]. In my remarks yesterday I referred to language that would broaden that amendment. I wish to call the attention of the Senator again to words that would make a broad review of that amendment. I suggest these words:

> And jurisdiction to hear and determine in such suits whether the rate fixed by the Commission is *in fact just and reasonable* is hereby vested in such court.

With the permission of the Senate, I desire to print in connection with my remarks made this morning extracts from my speech on this question made on April 3, 1906; also extracts from the document which was prepared by the Senator from Pennsylvania [Mr. KNOX], showing the court reviews in the different States, to which I referred yesterday. I also desire to print extracts from the decisions of the Supreme Court in support of the propositions I made this morning. I will not read these documents and decisions now, but, with the permission of the Senate, will insert them in my remarks of this morning.

The VICE-PRESIDENT. In the absence of objection, the permission is granted.

The question is on agreeing to the amendment proposed by the Senator from Georgia [Mr. BACON] to the amendment of the Senator from Iowa [Mr. ALLISON].

Mr. BACON. On that I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. SPOONER (when his name was called). As I have several times heretofore announced, I have a general pair with the Senator from Tennessee [Mr. CARMACK], who is absent. I transfer that pair to the Senator from Pennsylvania [Mr. PENROSE]; which leaves me at liberty to vote. I vote "nay."

The roll call was concluded.

Mr. CLARK of Wyoming. I wish to announce that my colleague [Mr. WARREN] is absent, having been called out of the city on important business. He desired me to also announce the fact that he is paired with the Senator from Mississippi [Mr. MONEY].

Mr. MONEY. I am paired with the Senator from Wyoming [Mr. WARREN], who has gone home on important business. If he were present, I should vote "yea" on this amendment to the amendment. I make this as an announcement sufficient for succeeding votes.

Mr. LATIMER (after having voted in the affirmative). I had forgotten that I had a pair with the Senator from New York [Mr. PLATT], and I therefore withdraw my vote.

The result was announced—yeas 22, nays 46, as follows:

YEAS—22.

Bacon	Daniel	McCreary	Rayner
Berry	Dubois	McLaurin	Simmons
Blackburn	Foster	Martin	Stone
Clarke, Ark.	Frazier	Morgan	Taliaferro
Clay	Gearin	Newlands	
Culberson	La Follette	Overman	

NAYS—46.

Aldrich	Clapp	Gamble	Nixon
Alger	Clark, Wyo.	Hale	Perkins
Allee	Cullom	Hansbrough	Piles
Allison	Dick	Hemenway	Scott
Ankeny	Dillingham	Hopkins	Smoot
Beveridge	Dolliver	Kean	Spooner
Brandegee	Dryden	Kittredge	Sutherland
Bulkeley	Elkins	Lodge	Teller
Burkett	Flint	Long	Warner
Burnham	Foraker	McCumber	Wetmore
Burrows	Fulton	Millard	
Carter	Gallinger	Nelson	

NOT VOTING—21.

Bailey	Frye	Mallory	Proctor
Burton	Gorman	Money	Tillman
Carmack	Heyburn	Patterson	Warren
Clark, Mont.	Knox	Penrose	
Crane	Latimer	Pettus	
Depew	McEnery	Platt	

So Mr. BACON's amendment to Mr. ALLISON's amendment was rejected.

The VICE-PRESIDENT. The question now recurs on the amendment proposed by the Senator from Iowa [Mr. ALLISON].

Mr. LA FOLLETTE. Mr. President, I offer the amendment which I send to the desk, to be inserted after the word "courts," in line 9 of the pending amendment.

The VICE-PRESIDENT. The amendment proposed by the Senator from Wisconsin to the amendment will be stated by the Secretary.

The SECRETARY. At the end of Mr. ALLISON's amendment it is proposed to insert the following:

Every Federal judge who owns any share of the capital stock or any of the bonds of a common carrier subject to the provisions of this act, or who accepts or uses, or who procures for the use of any person, any pass or privilege for transportation withheld from any other person, is hereby disqualified and prohibited from hearing or passing upon as such judge any motion, question, application, proceeding, or from presiding at or hearing any trial arising under the provisions of this act.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Wisconsin [Mr. LA FOLLETTE] to the amendment of the Senator from Iowa [Mr. ALLISON].

Mr. LA FOLLETTE. I should like to have the yeas and nays on that amendment, Mr. President.

I understand, from queries within my hearing, that many Senators do not understand what the amendment is, Mr. President, and, if I am in order, I should like to explain it just in a word, or I will ask to have the amendment again read, in order that it may be understood.

The VICE-PRESIDENT. The amendment will be again read.

The Secretary again read the amendment proposed by Mr. LA FOLLETTE to Mr. ALLISON's amendment.

Mr. LA FOLLETTE. Mr. President, the law now precludes any member of the Interstate Commerce Commission from holding or owning any stocks or bonds in any railroad company subject to the provisions of this act. Why the courts or the judges who are to review the proceedings of the Commission here should not be likewise barred from ownership of the stocks or bonds of any railroad company subject to the provisions of this act, I am at a loss to understand.

In addition to that, my proposed amendment would disqualify any Federal judge from hearing any motion, presiding at any trial, or deciding any question affecting an interstate railroad where such judge has accepted a railroad pass or has procured railroad passes for others. Any judge who does that now violates the interstate-commerce law. I assert that there are Federal judges who are accepting and using passes in this country to-day in violation of law.

No judge should be permitted to hear, try, and determine a case under a statute the provisions of which he is himself guilty of violating.

Since I have offered this amendment Senators on this floor have informed me of specific instances where Federal judges have procured passes for members of their families; of other cases where they have been furnished private cars and transportation for large parties, in violation of the positive but somewhat weak provisions of existing statute. It offends one's sense of justice as well as propriety, and in every such case the law should disqualify the judge from acting.

If any Senator upon this floor can find a good reason for saying that a judge who is to determine any question arising under this bill, when it shall become a law, should be interested in the property of the railroad company that is to be affected by the question of rates involved, I should like to have him rise in his place and proclaim it now. There is not a lawyer on this floor who in any suit against a railway company would be willing to submit the case of his client to a jury of twelve men with railroad passes in their pockets. Neither should a judge who receives favors from a railroad company be permitted to try any case in which the interests of the railroad company are involved.

Mr. HALE. Mr. President, I have some respect for the judiciary of the United States. I think there ought to be a halt in the Senate somewhere, so I move to lay the amendment upon the table, and upon that motion I ask for the yeas and nays.

The VICE-PRESIDENT. The question is on the motion of the Senator from Maine to lay the amendment of the Senator from Wisconsin [Mr. LA FOLLETTE] to the amendment of the Senator from Iowa [Mr. ALLISON] on the table, on which motion the Senator from Maine demands the yeas and nays.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr. LATIMER (when his name was called). I am paired with the senior Senator from New York [Mr. PLATT]. If he were present, I should vote "nay."

The roll call having been concluded, the result was announced—yeas 40, nays 27, as follows:

YEAS—40.

Aldrich	Clapp	Frye	Millard
Alger	Clark, Wyo.	Fulton	Nixon
Allee	Cullom	Gamble	Perkins
Allison	Dick	Hale	Piles
Ankeny	Dillingham	Hansbrough	Scott
Brandegee	Dolliver	Hopkins	Smoot
Bulkeley	Dryden	Kean	Spooner
Burnham	Elkins	Kittredge	Sutherland
Burrows	Flint	Lodge	Warner
Carter	Foraker	Long	Wetmore

NAYS—27.

Bacon	Daniel	McCreary	Rayner
Bailey	Dubois	McCumber	Simmons
Berry	Foster	McLaurin	Stone
Blackburn	Frazier	Martin	Taliaferro
Clarke, Ark.	Gallinger	Morgan	Teller
Clay	Gearin	Newlands	Tillman
Culberson	La Follette	Overman	

NOT VOTING—22.

Beveridge	Depew	McEnery	Pettus
Burkett	Gorman	Mallory	Platt
Burton	Hemenway	Money	Proctor
Carmack	Heyburn	Nelson	Warren
Clark, Mont.	Knox	Patterson	
Crane	Latimer	Penrose	

So the motion of Mr. HALE to lay Mr. LA FOLLETTE's amendment to the amendment of Mr. ALLISON on the table was agreed to.

Mr. TILLMAN. Mr. President, I am exceedingly anxious to bring this bill to a vote, and I would not intrude on the Senate or present an amendment which has practically been voted down three times already were it not for the purpose of making a statement. I send to the desk an amendment which I offer.

The VICE-PRESIDENT. The amendment proposed by the Senator from South Carolina will be stated.

Mr. TILLMAN. It is to be added to the amendment now pending proposed by the Senator from Iowa [Mr. ALLISON].

The SECRETARY. After the word "courts," on line 9 of the printed amendment offered by Mr. ALLISON, it is proposed to insert:

And if such court shall find that the order was beyond the authority of the Commission or was a violation of the constitutional rights of the carrier, it shall issue an injunction against the enforcement thereof.

Mr. TILLMAN. Mr. President, the paternity of that idea will probably never be wholly known. I have my opinion as to what brain coined that exact language, but, without positive evidence, I am unwilling to declare who was its originator. It is known as the "Long amendment." It followed a conference of Senators at the White House and was introduced in this body two or three days after that by the Senator from Kansas [Mr. LONG]—I mean that the amendment I now submit is in substance the Long amendment, the central idea involved being the same.

The Senator from Montana [Mr. CARTER] this morning, in his earnest defense and eulogium of the President, declared that the President need not—I believe I quote his words correctly—have conferred with Senators at all. That is the substance of what he said; but the Senator must know, because he himself has been to the White House and been talked to by the President on this business, that the President has conferred with a great many Senators about this matter. There will be some surprise when I say to the Senate that, through another, the President has conferred with the Senator from South Carolina who is now speaking. [Laughter.] It is, therefore, somewhat in the nature of a confession, as well as to give some of the inside history of recent events connected with this legislation, that I now take the floor to offer this amendment.

My Lord Bacon, in those famous essays of his, has declared that "Reading maketh a full man, conference a ready man, and writing an exact man." Senators know that I seldom or never write anything to be read in this Chamber. When I want to communicate to those who are listening I almost always speak the words that come without choice. Very often they are badly spoken or, rather, badly put together, but they at least convey my opinion and feeling at that particular moment. In order that I might be careful to misstate nothing and to be certain in my facts, I have written out the account of my negotiations with the President of the United States.

On Saturday evening, March 31, 1906, I was informed by ex-Senator William E. Chandler that President Roosevelt had sent to him a note asking him to call at the White House that evening; that he had obeyed the call, and had been told by the President that he desired through him to get into communication with me as the Senator in charge of the railroad rate bill, and with Senator BAILEY, representing the Democrats of the Senate, for the purpose of ascertaining whether there could be such united action among the friends in the Senate of the Hepburn bill as would make a sure majority in its favor and against injurious amendments. Mr. Chandler said that the President named various Republican Senators who he thought were true friends of the bill, but said that it might require nearly all the Democrats to defeat obnoxious amendments. Mr. Chandler said the President had stated that he had come to a complete disagreement with the Senatorial lawyers who were trying to injure or defeat the bill by ingenious constitutional arguments, naming Senator KNOX in addition to Senators SPOONER and FORAKER [laughter]; that the President stated carefully and deliberately the basis upon which he thought there should be cooperation, viz: An amendment expressly granting a court review, but limiting it to two points; (1) an inquiry whether the Commission had acted beyond its authority—ultra vires was his expression—and (2) whether it had violated the constitutional rights of the carrier. Mr. Chandler stated that the President repeated that he had reached a final decision that the right of review should be thus limited, that thus far he would go and no farther; that his decision would be unalterable.

Mr. Chandler further said he told the President he believed it highly probable that the greater part of the Democrats would join in the President's limitation of the powers of the court, but that Mr. BAILEY and myself would urge in addition some prohibition of the courts from issuing ex parte injunctions; and he said that the President stopped him, saying that he need not enlarge upon his point, because he was heartily in favor of such a restriction of injunctions.

On the next day, Sunday, April 1, I repeated to Senator BAILEY Mr. Chandler's statements, and that day or Monday morning informed Mr. Chandler that we did not believe there would be any difficulty in coming to an understanding on the basis proposd by the President; and on the evening of Monday Mr. Chandler told me he had so assured the President and asked him not to be disturbed by the newspaper items growing out of the talk about Senator LONG's amendment, published in the newspapers as one agreed upon at a White House conference on Saturday.

Mr. Chandler and I continued to see each other every day, and on April 5 I told him of the existing situation; that there was no trouble and that progress was being made; and he went to the White House to make a favorable report to the President. On Saturday, April 7, I was called to South Carolina, but saw Mr. Chandler and gave him the substance of an interview with Mr. BAILEY on that day, which had indicated that everything was going on as we could wish.

On Wednesday, April 11, I had a full talk with Mr. Chandler, who afterwards on that day informed me he had reported to the President. Mr. Chandler told me that he had on April 8 conferred with Senator ALLISON and had asked him to intervene in the conferences that were going on, and that Mr. ALLISON had agreed to do so, and that the President had seen Senator ALLISON about it.

On April 13 Mr. Chandler informed me that he was sure that Mr. BAILEY and I had better confer not wholly with him, but also with Attorney-General Moody, as a representative of the President and his trusted adviser, on the law points involved.

Therefore, on April 15, by an arrangement made by Mr. Chandler, Mr. BAILEY and I had a long conference with Mr. Moody, in which we found ourselves in perfect accord with him, except that there was a difference of opinion on the question whether the prohibition of injunction should be only until after notice and hearing, and not necessarily until the final decision of the case. There was absolute accord from the first on the proposition that the court review should be limited to the inquiry whether the Commission had exceeded its authority or violated the carrier's constitutional rights.

After talking over the whole case, Mr. Moody said: "I will send you what I understand to be the kind of an amendment we can agree on, and which I think he will accept." Mr. Moody on the following day sent a typewritten draft of a memorandum of our joint views to Mr. BAILEY, and I have the original here.

The morning after the Democratic conference I went to see Mr. Moody alone and told him not to be alarmed by the newspaper reports; that we could, I felt sure, get 26 votes, and possibly 1 or 2 more, for the proposed amendment, and if the President was certain of 20 Republican votes it was a sure thing. Subsequently Mr. Chandler made another appointment with Mr. Moody, and Mr. BAILEY and I saw him at the Department of Justice. The conference was brief, and one or two slight verbal changes were made in the proposed amendment, and everything was agreed upon, the understanding being that we would work together with the President to get the necessary votes to pass it. Mr. Moody expressed the doubt whether President Roosevelt could get enough Republicans to pass the Bailey proviso, but felt sure the Overman amendment would go. But he declared it to be the President's fixed purpose to insist on the Long amendment as to a narrow court review.

With this draft made by Mr. Moody before me, I prepared a brief amendment, which was offered in the Senate on May 3. The day before I had talked with Senator ALLISON concerning such a condensed amendment, and on the morning of the 3d I sent to him a copy, with a letter, he being then sick at the Portland.

During the period covered by this statement—from March 31 to May 4—Mr. BAILEY and I made constant efforts to learn the sentiments of Democratic Senators, and also conferred with a few Republicans, and we informed Mr. Chandler and Mr. Moody that there was no doubt of the passage through the Senate of the amendment under consideration if the President would adhere to his programme. We had no suspicion that any change was intended until the afternoon of May 4, when the President summoned the thirty-six newspaper correspondents to see and hear him at the White House.

Mr. President, I ask to have the draft of this amendment, prepared by Mr. Moody after conference with Mr. BAILEY and myself, and amended by Mr. Moody at the second conference in one particular as to words and in another particular by Mr. BAILEY as to words, but not changing the substance at all, printed in the RECORD.

Several SENATORS. Have it read.

Mr. TILLMAN. Let it be read. This stuff has been bandied about so extensively it is almost nauseating to hear it any more. But I will let it go in.

The VICE-PRESIDENT. The Secretary will read as requested.

The Secretary read as follows:

AMENDMENT TO THE HEPBURN BILL.

First. Strike out the words "fairly remunerative" wherever they occur.

Second. Allow the bill to stand in the respect of providing for maximum rates only.

Third. Adopt an amendment which is a composite of the amendment printed in Collier's on March 24—the Long amendment—and the Bailey amendment of March 21, as follows:

"That the orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time as shall be prescribed by the Commission, and shall continue for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless sooner set aside by the Commission, or by a court in a suit brought by any carrier, person, or corporation, party to the complaint, affected by the order of the Commission, against the Commission in the circuit court of the United States, sitting as a court of equity in the district wherein any carrier party to said suit has its principal operating office; and jurisdiction is hereby conferred on the circuit courts of the United States to hear and determine in any such suit whether the order complained of was beyond the authority of the Commission or in violation of the rights of the carrier secured by the Constitution; and if, upon the hearing, the court shall find that the order complained of was beyond the authority of the Commission or in violation of the rights of the carrier secured by the Constitution, it shall enjoin the enforcement of the same: *Provided, however*, That no order of the Commission shall be set aside or suspended by any preliminary or interlocutory decree or order of the court. Said proceedings shall have precedence over all other cases on the docket of a different character, and the court shall have power to make orders to secure the attendance of persons from any part of the United States, and the existing laws relative to evidence and proceedings under the acts to regulate commerce shall be applicable. Either party to said proceeding shall have the right to appeal directly to the Supreme Court of the United States, and such appeal shall have precedence in said Supreme Court over all other cases of a different character pending therein.

Mr. TILLMAN. Mr. President——

The VICE-PRESIDENT. The time of the Senator from South Carolina has expired.

Mr. TILLMAN. I ask unanimous consent to complete my statement.

The VICE-PRESIDENT. Is there objection to the request of the Senator from South Carolina? The Chair hears none. The Senator will proceed.

Mr. TILLMAN. I will not impose on the good nature and courtesy of the Senate.

On Friday night, I believe it was—yes, Friday night—after the correspondents had been called to the White House, and the President had notified the country that he was now getting all he wanted in the then baby Allison amendment, which has grown considerably since, but which at that time, I believe, embraced only the clause giving jurisdiction to the court to hear and determine such suits—at that time that was the breadth to which the little fellow had grown—I heard of this—I will not say surrender. I am waiting to find out what it was. Well, I will not say anything. I will just go along and state the facts. I heard of this at dinner, about 7 o'clock. One of the newspaper men who had been in the Cabinet room came to my hotel and reported what had occurred. He had met Senator Chandler on the street, and they had come in together.

I will say here that the Senator was much more excited than I was over it. As soon as I finished eating, we two, having been, you might say, conspirators together, if it was conspiracy, went to see my colleague, the Senator from Texas [Mr. BAILEY]. He was equally innocent of any knowledge, except what he had heard on the street on his way home. And then, wishing to get at the third or fourth conspirator, we went immediately to the residence of Mr. Moody. He was absolutely innocent of any knowledge of any such purpose on the part of the President, and so stated. He was preparing to leave when we reached his residence, and left for the South or somewhere on a visit of rest and recuperation. So the opportunity to get fuller facts from him did not occur.

Now, when it is recalled that my relations to the President are unfriendly, that I have been severely criticised in this Chamber because in pursuing an argument on another point I had made some allusions to him that, possibly, were not altogether Senatorial or in consonance with the amity and good relations that ought to exist between the Senate and the Executive, and that I had been called down by the Senator from Maine and others, it can readily be understood that when the ex-Senator from New Hampshire, who is a warm personal friend of mine, came to me with a notice that the President had sent for him, and then returning said he had sent for him for the purpose of getting in touch with the Democrats, to get their help, I thought very seriously for a while before I would consent to pocket my pride and lay aside my just indignation for a past wrong, as I considered it; but having regard for my duty, in charge of a great legislative bill, affecting the rights of the entire country, I decided it to be necessary for me to cooperate and help Theodore Roosevelt pass a good railroad law.

I have conferred, as I said in the statement, with several Republicans. The day I think Senator ALLISON was taken sick I showed him this amendment of mine. He said, "I think that is all right, except that we can hardly get votes enough for the Bailey proviso; but we will, I think, be sure to carry the Overman amendment." The next day I showed it to the junior Senator from Iowa, and he assured me that there were twenty-two Republicans sure for the amendment which I sent to the desk a moment ago, limiting the court review to questions involving the authority of the Commission and the constitutional rights of the carrier.

It therefore follows that I had every assurance that there were enough votes in the Senate on the two sides, laying aside all partisanship and coming together to discharge a great public duty, to secure the passage through the Senate of such provisions in the Hepburn bill as would guarantee the business interests of the country against interference and destruction by the judges in the work of beneficent work which we hoped that the Commission would do.

I shall not pursue the argument. I presume it is useless. The Senator from Rhode Island [Mr. ALDRICH] has resumed control of the Republicans. He shakes his head. That may be due to his modesty, or the fact that he has come nearer being unhorsed and thrown into the ditch in this struggle than ever before since I have been here. All the same, I repeat it.

I do not know whether it be partisanship and a desire that the Republicans should all line up, or whether the timid ones, who have been considering very seriously their duty to their constituents and were therefore anxious and willing to get behind the President and would therefore have voted for this provision, are not now rejoiced that Theodore Roosevelt gets between them and the people and says, as he has said in the dispatch to the legislative committee of the State Grange of Pennsylvania, that he has obtained all he ever desired to obtain.

The Senator from Texas, by repeated quotations from his messages and speeches, has demonstrated that the President has absolutely given up his contention in regard to the breadth of the court review. I will ask to have this printed—this dispatch which has been read by all and therefore it is not necessary to read it.

The VICE-PRESIDENT. Without objection, the dispatch will be printed.

The dispatch is as follows:

WASHINGTON, *May 6, 1906.*

W. F. HILL AND MEMBERS LEGISLATIVE COMMITTEE,
Pennsylvania State Grange, Harrisburg, Pa.:

Telegram received. I am happy to tell you that not only am I standing on my original position as regards rate legislation, but it seems likely that Congress will take this position, too.

The Hepburn bill meets my views, as I have from the beginning stated. The Allison amendment is only declaratory of what the Hepburn bill must mean, supposing it to be constitutional, and no genuine friend of the bill can object to it without stultifying himself.

In addition, I should be glad to get certain amendments, such as those commonly known as the Long and Overman amendments, but they are not vital, and even without them the Hepburn bill, with the Allison amendment, contains practically exactly what I have both originally and always since asked for, and if enacted into law it will represent the longest step ever yet taken in the direction of solving the railway rate problem.

THEODORE ROOSEVELT.

Mr. TILLMAN. But I want to call attention to the fact that in the message delivered to us on May 4, the day before these interesting occurrences took place, the President of the United States, in writing those burning words which have been flashed all over the United States about the Standard Oil trust, used these words:

It is impossible to work a material improvement in conditions such as above described merely through the instrumentality of a lawsuit. A lawsuit is often a necessary method, but by itself it is an utterly inadequate method. What is needed is the conferring upon the Commission of ample affirmative power, so conferred as to make its decisions take effect at once, subject only to such action by the court as is demanded by the Constitution.

The broad review which has been contended for from the first by the Senator from Rhode Island, the review which gives the court the right to determine whether the Commission has fixed a just and reasonable rate without regard to its having invaded the constitutional rights of the carrier, has been yielded by the President, if I know anything about the English language, and, although he reiterated his views the day before he sent for the newspaper correspondents, he now says, and his friends here say, that there is practically no change, no difference; and yet we have been kept here for four months debating this proposition. We had won our fight, as I believe, and would be to-day in possession of the majority of the Senate, to put those words into the bill, if the President had stood fast by his oft-repeated assertion of his desire and purpose and that he would not yield one jot or tittle.

As for the treatment of me, as for the failure to say to those with whom he had sought to enter into negotiations that he had changed his mind, the failure to notify, I suppose, although

I do not know, the Attorney-General that he had changed his mind; that negotiations were off; that he could get all he wanted from the Republicans without any help from us, I shall say nothing. I leave the facts to go to the country and let the people of the United States judge whether Theodore Roosevelt is entitled to the glory and honor of the rate legislation originally conceived by the Democratic convention in the last three campaigns and demanded in our platforms; whether we have not missed a golden opportunity to enact a really effective law and thus give the relief which the people demand. Whatever be the outcome the fact remains that had the Senate been left to itself this bill would be a great deal better than is now possible.

Mr. CARTER. Mr. President, I feel, as we approach the conclusion of this discussion, that it is due the Senator from South Carolina [Mr. TILLMAN] that expression be given to the general appreciation in this Chamber of his uniform courtesy and good temper in the conduct of the bill under consideration. That the Senator from South Carolina has worked industriously for the achievement of the result sought no one will question, here or elsewhere. I feel that in the light of the paper he has just read and the exhibit made in connection with it that the general well-being of the country and the gayety of nations would be greatly increased if I were to ask unanimous consent that the Hon. William E. Chandler, late a Senator from the State of New Hampshire, be given the privileges of the floor for the remainder of the debate. However, inasmuch as that request would be somewhat unusual. I withhold it, notwithstanding the fact that I am quite sure the ex-Senator from New Hampshire would make a contribution to current parliamentary literature very interesting, if not instructive.

Mr. TILLMAN. Will the Senator allow me?

Mr. CARTER. Certainly.

Mr. TILLMAN. I shall be more than delighted to hear what the ex-Senator from New Hampshire, Hon. William E. Chandler, has to say about this, and I should also like to hear from Theodore Roosevelt and William H. Moody.

Mr. CARTER. I have no doubt that Mr. Chandler will be heard from, and, perchance, the President and the Attorney-General will likewise give the incident such notice as may seem to them appropriate.

The papers presented by the Senator from South Carolina in substance mean that the President was anxious from the beginning to maintain the integrity of the Hepburn bill as it came from the House. Finding that this could be done without amendment other than inserting a mere interpretation in the matter of jurisdiction, he was content with that. As the bill stands under the so-called "Allison amendment," the matter of jurisdiction is interpolated merely for the purpose of interpreting and making clear that which it is insisted was in the bill from the beginning.

The Senator from Texas [Mr. BAILEY] desired, apparently, to avoid the issue, although unconsciously, I think. With his usual display of mental acumen he undertook to differentiate between jurisdiction and court power and the restraining of courts from granting temporary injunctions. All of the quotations to which the Senator referred in his speech upon yesterday, beginning on page 6873 of the RECORD, go to the question of the President's position with reference to the orders of the Commission standing until set aside by a final adjudication in court. That goes to the exercise of court power and jurisdiction. The President's position, to my mind, has been consistent from the beginning. It has been my privilege to hear an expression of his views, and on every occasion he has insisted that the bill as it came from the House was, in his judgment, the best possible legislation that could be secured upon the subject. Finding that amendments were offered in such vast volume in the Senate, it is no wonder the President sought to restrict in some manner the adoption of amendments and the utter confusion and ruin of the bill.

I take it that the Senator from Texas did himself little credit in attempting to evade the issue by claiming that he was not discussing the jurisdiction of the courts on the occasion of his assault upon the President. The subject-matter to which he referred related practically to that subject only. The Senator sought to make answer to some observations I thought proper to submit by referring to me as an inconspicuous member of this body in connection with this measure. It is true I have been here but a brief space of time, and I at once disclaim any purpose to indulge in such lofty pretensions as the Senator from Texas arrogates to himself. I would prefer, Mr. President, in every walk and relation of life to occupy the position of an unobtrusive citizen or official performing duties as they arise, rather than to seek special distinction by walking about wrapped in a mantle of egotism and strutting through an atmosphere of vanity, considering all other men as puny pigmies. I believe it is the right and privilege of any Senator to refer in this Chamber to a public record, and I at once and cheerfully ascribe to any Senator the privilege of making a personal allusion when only public records are involved. I have been inconspicuous in connection with this legislation, but I would prefer the inconspicuous position rather than to assume the burden attached to some Senators who have been more conspicuous in offering certain amendments to this bill.

Mr. BAILEY. The Senator from Montana [Mr. CARTER] misquoted what I said in order to make it a little easier to answer it. I did not describe him as an inconspicuous member of this body. What I said was that his services in reconciling Republican differences had been inconspicuous, and he might just as well treat himself to the novel sensation of being accurate once in a while.

Mr. President, I shall not allow myself drawn into a debate over what I think of my own capacity. It is true I do not go through the world wringing my hands and begging everybody's pardon because I happen to be in their way. It is true I maintain my opinions with some persistence and occasionally with a regrettable degree of dogmatism. But there is a vast difference, sir, between egotism and dogmatism. I have always believed that egotism is an offensive trait; but I do not believe that a lack of confidence on the part of any man who aspires to a seat in the Senate of the United States in the correctness of his own views is a special qualification for service in this body. If a Senator does not have confidence in his own views, in God's name how can he ask the people of a State to give him one-half of their authority in this, the greatest legislative assembly in the world?

Every man who announces himself as a candidate for the Senate testifies to the people whose suffrage he seeks a high degree of confidence in his own ability. The man who tells me that he does not value his own judgment, and yet asks the people to clothe him with the dignity of this great office, confesses that he seeks an office which he thinks himself incapable of filling. I do not belong to that class. I have never sought an office I did not think myself qualified to fill, and I never shall.

If it pleases the Senator to provoke—no, I will not use that word, because no Senator shall provoke me into a debate of that kind—a personal exchange, this is not the place to give the provocation. If one Senator entertains toward another a feeling which leads to personal and offensive criticism, it ought to be given vent at other times and in other places. This Senate Chamber shall never be the scene of a disorderly personal debate between me and any other Senator. With this I dismiss the allusion of the Senator from Montana, who began the attempt at personal controversy in his previous speech.

I shall only detain the Senate long enough now to say that what the Senator from South Carolina has said as to my connection with what we will call this unfortunate misunderstanding between him and the President is correct. I did not myself interview ex-Senator Chandler, and I derived all the information I have as to the messages of the President through Senator Chandler to the Senator from South Carolina from the Senator from South Carolina alone.

When I was invited to go with him to discuss with the Attorney-General this matter, I replied that I was willing to discuss a law question with the law officer of the Government; that while I had always declined and while I should continue to decline discussing with any member of the executive branch of the Government the propriety or the wisdom of legislation in Congress, I was willing to discuss with the Attorney-General the question of law involved in the amendment which I had proposed.

I went with the Senator from South Carolina to the Department of Justice, and I discussed at some length and with a result entirely satisfactory the legal question with the Attorney-General. I said to him what every Senator on this floor has known from the beginning, that my deepest concern in respect to a court review is to protect the orders of the Commission from judicial interference until the court is ready to render a final judgment, and as I understand it these suggestions and this amendment which the Senator from South Carolina has read were not only drawn by the Attorney-General, but were approved by the President before they were transmitted to me. As this paper came to me it included what is known as my anti-injunction amendment, word for word, as it was taken out of the amendment on the subject of a court review which I had presented to the Senate. It was not even changed to conform to the new court provision which the Attorney-General had drawn, and the pencil line which has been drawn through certain words I drew myself. In order to make that part of the amendment conform to what had preceded it, I added the words

"or order" in lieu of what I had stricken out, and in the second interview that change was approved by the Attorney-General.

Mr. President, I hope the Senate and the country will draw one moral from this disagreeable affair. I hope it will tend to convince Senators and citizens of the vast importance of preserving forever and completely the separation between the several departments of this Government, for as surely as the Executive calls legislators to a conference with him, misunderstandings will arise; and as surely as the Executive is permitted to influence the judgment of legislators, just that surely and just that far they violate the spirit and the letter of this splendid system.

This misunderstanding will probably be fruitful of some good, which shall in the years to come outweigh the evil which has resulted from it. I would rather see this bill defeated until a new judgment could be taken from the people upon it; I would rather see the court amendment as broad as the English language can make it, and that would not be broader than you gentlemen have made it now; I would rather suffer any single evil, than to see the great, separate, and independent departments of this Government brought under the dominion of a single will.

Mr. DOLLIVER. Mr. President, I would not feel any disposition to take a part in such a controversy as is now going on if the honorable Senator from South Carolina had not appeared, at least, to call me as one of his witnesses. I have been engaged in this rate discussion now for a good deal over a year. I never sought any responsibility in connection with it, but found that responsibility upon me as a member of the Interstate Commerce Committee of the Senate.

I do not intend to indulge a tone of criticism, much less of scolding, but I can not forbear to say that we have spent nearly a year magnifying the little questions connected with the railway problem and treating with neglect the substantial questions which are involved. I said more than a year ago in this Chamber that we ought promptly to pass a bill in pursuance of the recommendation of the President. I did everything possible to induce the Senate to take that action at the second session of the last Congress, and, in common with others, spent the whole spring and nearly the whole summer helping to discharge the business which the Senate laid upon the Interstate Commerce Committee.

We are now advanced to the concluding stages of this controversy, and as I reflect upon it the thing that impresses me most is that this bill, which is a very simple and a very complete response to the petition of the business community and to the recommendations of the President of the United States, has had almost as much trouble from its friends as it has had from its enemies.

It has had to stand fire from two directions—from the camp of its opponents and from the scattered tents which shelter its adherents. The fact that it has escaped the steady fusilade of the one and the random shots of the other is not only an unusual fortune of war, but a gratifying evidence that it is made of proper stuff. In the first place it has survived the criticism of the constitutional lawyers. I do not underestimate their powers, nor their influence in a deliberative body like this.

Here is the only spot in the world where no limits are ever set on the learning of the profession. The courts protect themselves against such inundations of legal lore; while we all bow, with the multitude, before these displays of forensic genius which enthrall the Senate and enchain the galleries till, like our great ancestor conversing in the garden, we forget all time. Fortunately this bill was prepared to stand the siege guns of constitutional lawyers. It was drawn on lines laid down in the great decisions of our courts. The worst fate that could befall it in the judgment seat would only teach the American people what steps to take to accomplish the work which they have in hand. Therefore they can await the outcome of judicial proceedings with an equal mind. To have the measure vetoed by the Supreme Court is one thing; to have it overwhelmed in the Senate Chamber by the onset of constitutional lawyers is quite another. That fate it has happily escaped, for the champions of the Constitution, whose combined attack might have been ruinous to the measure, have spent their time refuting one another, introducing here an intellectual Kilkennyism never before seen in the Senate of the United States.

Senators have begun speeches by denouncing the measure as unconstitutional and ended by declaring their purpose to vote for it, as if the proverb read, "Be sure you are wrong, and then go ahead." A Senator who is against the bill made a speech for it, while another who is for it made a speech against it. A Senator who has gone over the measure three times in elaborate arguments finds no soundness in it, sees in every section the mangled remains of the Constitution, seriously proposes to take a little bill of his own and tuck it in tenderly by the side of these wicked and repugnant offenses against constitutional government as an alternative remedy.

And so the conflict has raged from day to day, from week to week, from month to month, and, as the end of the struggle approaches, the friends of this measure can join in the admiration of the prowess of the legal gladiators, without concealing their gratitude that in the confusion the bill itself has escaped without material injury.

These rival detective agencies of the law that have been shadowing the Constitution all winter are about to be retired from business so far as this bill is concerned. We are surely in no position to regret that the President of the United States has been willing to take the leadership of this controversy, a post which he has occupied from its very beginning.

It is no use to reproach my friend from Texas [Mr. BAILEY] and my friend from Maryland [Mr. RAYNER] because they did not worry themselves about interstate commerce while they were in the House of Representatives. That is an attack on nearly everybody, but it simply illustrates the fact that when these personalities begin to intrude you can not tell who is going to get into difficulty.

Few of either party exhibited any activity in the House of Representatives or anywhere else, because everybody knows that the entire attention of the American people was for five years preoccupied by the war with Spain and the problems that grew out of it, and it is no particular reproach to anybody that he did not become excited about other questions.

We can trace the new public interest in this question and all kindred questions to the leadership of the President of the United States. I have described it on this floor as the most superb moral leadership that this generation has had, and I rejoice that his hold on the affection and the good will of the American people is so complete that not even the eloquence of my friend from Texas can disturb their confidence either in his integrity or in his sagacity.

Now, Mr. President, I do not intend to enter into a discussion of the law applicable to the amendments which have been offered by my honored colleague, the Senator from Iowa [Mr. ALLISON]. He has been my counselor and my guide in these undertakings ever since I have given attention to them. For more than forty years he has devoted his life to the services of the American people, and I do not propose to permit it to be said that he either has allowed himself to be misled or has misled anybody else in connection with this matter.

The original Hepburn bill omitted any affirmative words conferring jurisdiction on the courts. It did so designedly. I will say to my honored friend from Texas that that omission was made with the knowledge and advice of one of the greatest lawyers in the State of Texas, a man whose fame as a jurist has been won in the courts. Night after night we sat up together and gave our entire attention to the problems with which we have to deal in this bill. We agreed that nobody knows exactly what the courts of the United States will do with an order of the Commission; but we agreed that whatever they may do their jurisdiction does not depend on the language of this bill conferring it. Therefore, aside from providing the venue of the suits and distinctly providing that the orders of the Commission may be set aside or suspended by a court of competent jurisdiction, we said nothing. But the bill was drawn with the distinct understanding that the courts of the United States have in relation to these orders a jurisdiction which the Congress can not abridge in any way.

My honored colleague [Mr. ALLISON] yesterday stated the whole law of this case. He has not won very great fame as a constitutional lawyer, but he has been in contact with the business of the Government of the United States long enough to know more about legislation and the problems connected with it than any man who has occupied a seat in this Chamber in our generation, and with that intuitive common sense which he applies to every question he went right to the root of this matter.

What are we doing? We are exercising the power of Congress over interstate commerce. What is this order of the Commission when it is made and the rate which it fixes? Taken with the statute which authorizes it, it is the act of the Congress of the United States, and the position of the courts in respect to it is exactly the position which the courts occupy toward every other act of Congress. It does not lie with them to supervise the wisdom of it. It does not lie with them to pass upon the public policy of it. It does not lie with them to rewrite it. It lies with them only to judge of its conformity to the supreme law. Therefore these amendments which my honored colleague has offered have only put affirmatively into the Hepburn bill the jurisdiction which its friends have from the beginning claimed

that it conferred upon the courts. They have given heed to the argument made by my honored friend from Pennsylvania [Mr. KNOX], who pointed out that while a suit was apparently intended, there was no defendant in sight, and that it would greatly strengthen the bill from a legal standpoint if a positive statement of the jurisdiction was made in the bill itself.

Whoever says that the President of the United States has surrendered anything impeaches a courage which needs no defense before the American people. Neither ought we to listen without protest to the suggestion that the President of the United States has been trapped. He is surrounded by official advisers who are great lawyers—great constitutional lawyers, if you please—and he needs no indorsement here, when he says to the American people that these amendments leave the Hepburn bill exactly as he desires it to be left, with that jurisdiction in the courts of which no act of Congress can deprive them.

The very object of this bill is to get the judgment of somebody wholly removed from the bias of interest as to what the rate ought to be and to give the finding effect within a reasonable time. The courts have steadfastly refused to assume that duty, because the act of establishing a rate is a power expressly conferred upon Congress. This bill creates a Commission to do that business, because, even if the courts had the power to do it, it is not within the field of their training and experience. We create the Commission, therefore, in order that this work may be done by men specially qualified to do it. The bill increases the number of the Commissioners, and pays salaries nearly equal to the compensation of our highest courts. The questions involved are not questions of law. They concern the practical adjustment of everyday affairs of business, yet men stand here gravely and declare that a direct recognition of the jurisdiction of the circuit court to hear a suit brought to vacate one of these orders takes all findings of the Commission and subjects them to the scrutiny of a judge in order that its mistakes may be brought into chancery and exposed to the vicissitudes of an interminable lawsuit.

While it may be regretted that this discussion has been so largely given over to a battle of the law books, the outcome of it has not been as disastrous as might have been anticipated. For expositors of the Constitution, equally famous in American public life, while they have not convinced one another, have made everybody's position comfortable and everybody's opinion respectable.

If they have not simplified the transaction in which we are engaged, they have at least given us an opportunity to simplify it for ourselves. It does not require a law library to ascertain the limitations which must guide the work which we are trying to do. The power to regulate interstate commerce is confided to Congress, and to no other department of the Government. Whatever else may be said about the Commission which we are creating, the act which they perform becomes a part of the act of Congress through which they derive their authority, and the rate which they fix, in the language of Mr. Justice Miller, becomes the law of the land as completely as if Congress had established it without the intervention of an administrative board. Therefore the courts have exactly the same relation which they have to other acts of Congress and can be given no other jurisdiction over it.

This bill responds to the petition of the business community of America. It responds to the recommendations of the President of the United States. It will have the approval of the American people; and the President of the United States makes no surrender when he gives to it in the form in which it will pass this body his unreserved approbation.

Mr. CLAPP. Mr. President, it is my purpose to say a word on this occasion, without any invective or without any sarcasm or any attempt at humor.

Mr. President, when the smoke of this struggle shall have passed away, when the written provisions of this bill shall have been submitted to the American people, through the exercise of their own judgment upon it, instead of taking the dictum of members of this Senate as to what the bill means, Theodore Roosevelt will be recognized as having achieved the greatest moral victory in all the moral victories which have stamped him so conspicuously as an ideal American citizen.

When this bill came from the House of Representatives and was in the Committee on Interstate Commerce of the Senate, I was one who voted to bring the bill out upon the theory, as I believed then and believe now after weeks of weary and ofttimes dreary debate, that it was above the power of Congress in legislation to restrict or enlarge those rights which are guaranteed under the Constitution, and that the right of the carrier under this bill to go into court and defend his property rights exists not because written into this bill, but because it exists under the Constitution of our country.

There was one thing in this bill which I always regretted as an omission, and that was the failure to name the Commission distinctively and affirmatively as the party against whom the suit should be brought. In the process of discussion it came that that suggestion was made; in the process of discussion it came that the amendment which, for brevity's sake I shall refer to as the Long amendment, was suggested; in the process of discussion it came that the amendment, to which I shall refer as the Allison amendment, was also suggested; and I say to-day, Mr. President, that it may go into the RECORD and go as a prophecy that when the hysteria of this hour has passed away, when the American people, laymen and lawyers alike, shall read the statute as it will be printed, the American people will realize, as Theodore Roosevelt and the Republican members of this Senate realize, that in the essentials of this bill there has been no change whatever.

It was the demand of the people, accentuated and emphasized and crystallized by the President's message, that the Interstate Commerce Commission should be given power, not only to condemn an existing rate, but to name a rate which should take its place—a power which they lacked under the law of 1887. It was also insisted that the order of the Commission should go into effect, throwing upon the carrier the burden of relieving itself from that order if the order violated a constitutional right. Those two basic principles are wrought into this bill, and are wrought into it so plainly that no man can misread them.

I join somewhat with the Senator from Iowa [Mr. DOLLIVER] that much of this constitutional debate has been among the shadows and in the clouds, and, I maintain, as I did in the opening of this debate, that it is beyond our power to either restrict or enlarge the constitutional guaranties.

Now, one word in regard to the President himself. When this matter reached this point, there were three things which Theodore Roosevelt might have done. He might have stood back and said: "It is not for me to discuss the details of this legislation; I have said what the country requires, what the interests of the country demand, and you must work out the details;" but that would have been a cowardly position, inconsistent with the courage of Theodore Roosevelt. He might have taken, sir, another position. He might have built himself still greater and drawn himself still nearer to the American heart had he wanted to play the part of a demagogue and stand back upon private expressions, and have said: "The Hepburn bill, without change of line or letter;" and the American people, sir, would have believed in his attitude in that respect, that it was wrong to amend the bill. If he had been playing for popular favor, that is what he might have done. But that would have been inconsistent with the character of Theodore Roosevelt; and with that resolute fixity of purpose which has so characterized the man, he took hold of this matter. He knew, undoubtedly, had he stopped to think—which I doubt, for I do not believe the man counts the cost in popular favor, one way or the other, when duty points the way—but if he did at all, he must have realized that on the floor of this body, in the excitement and the frenzy of this hour, it would be charged that a great change had been wrought in this bill; but, sir, fearlessly and resolutely facing that proposition, he took the responsibility for this in the telegram issued, I think, last Saturday.

I want to predict to-day, Mr. President, on this floor, that, when the frenzy of this hour shall have passed away, when the American people in calmness shall judge his action, they will recognize in his courage in facing what might be criticism of his political and personal enemies, one of the most splendid exhibitions of courage in his character and career, distinguished for courage. For, Mr. President, after all, the supreme test of greatness is to be great enough to be greater than self.

Mr. LONG. Mr. President, the Senator from South Carolina [Mr. TILLMAN] in offering his amendment stated that it was the amendment that I had printed some weeks since. In this the Senator from South Carolina is mistaken, just as the Senator from Maryland [Mr. RAYNER] was mistaken when he said that the amendment which he offered was identical with the amendment I presented. That amendment was prepared, after consultation with the senior Senator from Iowa [Mr. ALLISON], the junior Senator from Minnesota [Mr. CLAPP], and other Senators. As first prepared, it was practically the same as what is now known as the Allison amendment. It was based upon the assumption that if the bill did not give jurisdiction to the courts over orders of the Commission, it was necessary to give that jurisdiction. I was impressed with the speech of the Senator from Pennsylvania [Mr. KNOX], in which he pointed out that the bill as it came from the House did not affirmatively give jurisdiction to the courts; and we who were in favor of the legislation admitted that if it did not give jurisdiction, or

rather if it could be so construed as to prevent the jurisdiction from attaching, then the bill would be unconstitutional. So, in order to make the point plain that we did not intend to prevent a review by the courts, my amendment was prepared and presented. There were in the closing part of that amendment these words:

And jurisdiction is hereby conferred on the circuit courts of the United States to hear and determine in any such suit whether the order complained of was beyond the authority of the Commission or in violation of the rights of the carrier secured by the Constitution.

Those words were added not with the view of restricting the jurisdiction of the courts to those two questions, but for the purpose of expressing affirmatively the jurisdiction the Supreme Court had taken over orders of State commissions in cases brought before them. It was to be placed in contrast with the proposition presented by the Senator from Ohio, in which he sought to have the court, on review, consider the wisdom and the policy of the orders of the Commission. So it was that in the preparation and presentation of my amendment we sought to do nothing more than to affirmatively state that jurisdiction was conferred on the courts to review the orders of the Commission.

In the remarks that I made on this bill on the 3d of April, the day the amendment was presented, I used this language:

But I agree with the Senator from Pennsylvania that there should be no question in regard to the right of a carrier that has been injured by an order of the Commission to sue the Commission in the United States circuit court.

I do not object to an amendment authorizing suit to be brought against the Commission and conferring jurisdiction upon the United States circuit court sitting in equity to hear and determine any such suit. I believe under this bill without amendment that two questions can be inquired into by the court in a suit brought by the carrier or anyone else injured by an order of the Commission, and I am not opposed to amending the bill by defining such jurisdiction of the court. I believe that suit can be brought to set aside the order of the Commission when the Commission has acted beyond its authority, for general unlimited jurisdiction is not conferred upon the Commission to make rates. It is a body of limited jurisdiction, and the law clearly defines its duties, and it must act within the law or its actions are void. I also believe that under this bill, without amendment, if the Commission makes an order that is a violation of the rights of the carrier, which are secured by the Constitution, the court, on a suit being brought, will suspend or set aside such order; and believing that these things are in the bill now I am not opposed to making the bill clear and definite by inserting such provisions.

I then quoted the amendment I offered, and made this statement:

But I fear that this amendment will not be satisfactory to the Senator from Pennsylvania and the other Senators who are seeking to amend this bill by inserting a provision for a court review. It is not the intention of those who are insisting upon a review to insert a provision to limit the jurisdiction of the courts to the two questions suggested in this amendment. They know that the courts would assume this jurisdiction now, for they have assumed it in cases arising under State statutes and have clearly defined the length to which the courts will go in examining the orders of a subordinate tribunal. If the Commission has acted within its authority in making the order, then the rate will only be set aside by a court if it is so unreasonably low as to amount to confiscation, and a confiscatory rate has been defined to be one that does not give a fair return on the property that is employed in performing the service.

I then said, after quoting from the speeches of the Senator from Massachusetts [Mr. LODGE] and the Senator from Ohio [Mr. FORAKER] as to the kind of court reviews which they desired:

I believe that if we have a commission to which Congress gives the authority to fix maximum rates under certain restrictions, it is the duty of that commission to exercise its judgment as to the limit to be fixed, and that judgment when once exercised should not be controlled or revised by a court on review, if the commission acted within its authority, unless the rate is fixed so high as to be extortionate to the shipper or so low as to be confiscatory to the carrier.

But what the Senators from Massachusetts and Ohio desire, and what the Senator from Pennsylvania desires, if we take the provisions for court review in the document which he had printed, is to place in this bill provisions that will authorize the court to sit in judgment on the *wisdom* and *policy* of the rates made by the Commission and suspend or set them aside, not only when they are confiscatory, but when for other reasons they deem them unwise or unfair.

I also said in the same speech:

If a provision for review is placed in this bill, similar to the provisions in the different States contained in the document prepared by the Senator from Pennsylvania, one of three things will occur:

First, the United States courts will follow a course similar to that taken by the supreme court of Minnesota, decline to exercise the rate-making function, and confine their consideration of the rate, as they do now, to the question as to whether it is confiscatory, and as to whether the Commission acted within the authority of the law;

or

Second, the courts will assume the jurisdiction, and if they do, then we should not assume to confer this power on the Commission, when, in fact, it is to be exercised by the courts on review, but we should adopt the plan of the Senator from Ohio, and impose the duty on the courts in the first instance;

or

Third, the Supreme Court, following its decisions and taking a course similar to that taken by the supreme court of Kansas in the Court of Visitation case, will determine that this attempt to confer upon the courts the legislative and administrative function of fixing rates is unconstitutional, for the reason that the Constitution gives to Congress the power to regulate interstate commerce, and Congress can not transfer that power to the courts, and this provision being incorporated in a bill that might not have been enacted without it, is so closely interwoven with the other provisions of the bill that the whole act is unconstitutional and void.

If the court should take the first course under such a provision for review as is desired by the Senator from Massachusetts [Mr. LODGE] and the Senator from Ohio [Mr. FORAKER], no injury would be done and those who favor this legislation would not be disappointed; but if the court should take either the second or third course which I have designated—and I think that one of these two courses would surely be taken—then the purpose and object of this legislation would entirely fail.

And so while I believe that this bill would not be held unconstitutional in its present form, for it specifically recognizes the right of review, and can not be construed as an attempt to prevent a review, yet I am willing to place in it provisions that are more definite along this line. But I am not in favor of any provision for review similar to those in the different States, to which reference has been made, because I believe that such a provision would imperil the constitutionality of the law and result in its being declared invalid by the courts. If a provision for a court review is inserted in this bill that is so broad as to be construed as imposing the rate-making power upon the courts, it will be done without my vote.

Mr. President, holding these views, I did not insert in the amendment I offered those words as a limitation upon the court, but as an expression of the jurisdiction they had assumed in such cases. It was after consultation by me with the Senator from Iowa [Mr. ALLISON], the senior Senator from Minnesota [Mr. NELSON], and the Senator from Oregon [Mr. FULTON] that the amendment which has been presented by the Senator from Iowa [Mr. ALLISON] was prepared. I said then to those Senators, as I say now, that, in my opinion, the judicial interference of the courts with the orders of the Commission would be the same under the amendment of the Senator from Iowa as under my amendment. The amendment presented by the Senator from Iowa is entirely satisfactory to me, and is not broader than mine. In this bill we give the Commission the power to determine and prescribe a rate which, in its judgment, is just and reasonable, and an order made by it will not be set aside unless it exceeds its authority or invades the constitutional rights of the carrier or shipper. The courts will not review the discretion of the Commission.

Mr. TILLMAN. Mr. President, it is very evident that the "grand old Republican party" are united absolutely and without any misgivings or doubts among any of its members in carrying out the programme agreed upon. I therefore withdraw the amendment, as I know it will be voted down. It has already been voted down in different forms about four times.

The VICE-PRESIDENT. The Senator from South Carolina withdraws his amendment. The question is on the amendment of the Senator from Iowa [Mr. ALLISON].

Mr. ALLISON. Before voting on the amendment, I desire to modify it by inserting the words which I send to the Secretary's desk.

The VICE-PRESIDENT. The proposed modification of the Senator from Iowa will be stated.

The SECRETARY. Before the word "and," the first word in the proposed amendment, insert the following:

And may be brought at any time after such order is promulgated.

Mr. ALLISON. A period should follow the word "promulgated," and the next word—"and"—should begin with a capital letter.

Mr. SIMMONS. Mr. President, I desire to offer an amendment, to come in immediately after the word "courts."

Mr. ALLISON. I presume I have a right to modify my amendment, Mr. President?

The VICE-PRESIDENT. The Senator has a right to modify his amendment. The amendment as modified is now before the Senate. The Senator from North Carolina [Mr. SIMMONS] offers an amendment to the amendment as modified, which will be stated.

The SECRETARY. After the word "courts," at the end of the amendment offered by Mr. ALLISON, it is proposed to insert the following:

Whenever an application for a preliminary injunction or interlocutory order is made in any such suit, for the purpose of such motion the order of the Commission and the evidence upon which the same was made shall be taken by the court as prima facie establishing that the rate or charge fixed in such order is just and reasonable.

Mr. FORAKER. I should like to have that amendment reported again.

The VICE-PRESIDENT. The Secretary will again state the amendment.

The Secretary again read the amendment to the amendment.

Mr. ALLISON. Mr. President——

The VICE-PRESIDENT. Does the Senator from North Carolina yield to the Senator from Iowa?

Mr. SIMMONS. Certainly.

Mr. ALLISON. I suggest to the Senator from North Carolina that his amendment, it seems to me, more properly should be placed on page 10 of the printed amendments.

Mr. SIMMONS. I will say to the Senator that I will examine into that later, but I desire to submit some remarks before the vote is taken upon his amendment.

Mr. ALLISON. I withdraw the suggestion.

Mr. SIMMONS. After I have finished my remarks I will withdraw the amendment and later will offer it to the section to which the Senator refers.

The VICE-PRESIDENT. The Senator from North Carolina is entitled to the floor.

Mr. SIMMONS. Mr. President, when I was interrupted by the expiration of my fifteen minutes earlier during the day, I stated that I proposed to finish upon some other amendment the discussing which I was then engaged. I will now start where I then left off.

The Hepburn bill, as it was sent to us from the other House, contained the provision which the Senator from Iowa [Mr. ALLISON] retains in his amendment, so far as fixing the place of venue for such actions as might be brought under the general law and equity practice for the purpose of enjoining, setting aside, or annulling an order of the Commission. No objection has been made by any Senator to this provision of the bill, because both sides of this Chamber are agreed that in certain cases—cases involving questions of constitutional right and cases involving questions of ultra vires—it is beyond the power of Congress to prevent the interference of the courts, and therefore it is admittedly appropriate and necessary that the bill should provide for a venue for the trial of such actions as might, under the principles of law and the Constitution, be instituted against the Commission upon these grounds.

Mr. President, after we have been discussing here for nearly three months the question of whether we should provide in this bill for a broad or a narrow review; after the President had assured the Senate and the country that under no circumstances would he consent to the insertion of any provision which would confer upon the courts unlimited authority to review the actions and the orders of the Commission; after the gentlemen on the other side of the Chamber, who have all along stood with the President upon this proposition, had repeatedly asserted upon the floor of the Senate and in private conferences with Senators on this side that they would stand inflexibly and unalterably against a broad court review provision, the Senator from Iowa, speaking for the President and for that part of the Senators on the other side who have heretofore stood with the President in this matter, now proposes to amend the venue provision of the Hepburn bill and confer upon the courts jurisdiction to hear and determine every possible order and requirement of the Commission.

It has been said here, and truthfully said, that language could not frame a court review broader than that provided in the amendment of the Senator from Iowa. Mr. President, when we say to the Senators on the other side who have for three months been standing with us on this question and who have now deserted us, "This provision is as broad as it can be made; jurisdiction more complete could not be conferred upon the courts," we are met with an amazing explanation. What is that explanation? The explanation is this: Though the language of this amendment may be, and is, sufficiently broad to confer upon the courts unlimited jurisdiction over all the orders and the requirements of the Commission, the courts will not, although ample jurisdiction is conferred upon them, have power to review any orders or requirements of the Commission, except orders which violate constitutional rights or which are ultra vires.

In other words, that it makes no difference how broad the language of the court-review provision is, the powers of the court to hear and determine a controversy as to the orders of the Commission is limited to such orders as are unconstitutional or ultra vires.

If that be true, if, notwithstanding the fact that the bill gives the courts the broadest possible jurisdiction to review these orders, the courts can not exercise that power except in cases involving constitutional rights or ultra vires, what in the name of common sense is the difference, so far as any possible provision of this bill is concerned, between a broad and a limited review? What has all this controversy during the last three months been about? Why have the gentlemen during these long months of debate insisted so strenuously that Congress should not write into this bill a broad court review, if, when it write it there, the courts have no greater powers in this regard than they would have under a provision giving the courts only limited powers of review?

If the explanation, if the reason these gentlemen give as a justification for their change of front be sound, Congress has no control whatever over this question of court review; it is a constitutional question; there is no difference between a broad and limited review, and this whole controversy has been a vain and a foolish controversy from the beginning. I say it is amazing that our erstwhile friends on the other side have just made this astonishing discovery.

Mr. President, the people of this country were reasonably satisfied with the Hepburn bill as it came from the House. They knew that it did not give them much; they knew that it did not give them as much as they demanded; they knew that it did not give them as much as they were entitled to demand of their representatives in Congress; but they recognized it as a step in the right direction; they regarded it as the recognition of a principle for which they contended, and they were content to wait until the Senate and the House should be constituted in a way that would enable them to come with increased demands with some hope and assurance of having them recognized.

When this bill came over from the House, instantly assaults began to be made upon it in this body. It was sought to weaken it in its essential remedial provisions, weaken it in the interest of the railroads instead of strengthen it in the interest of the people. They were assaults calculated to emasculate the bill and impair the little it offers in the way of relief from hard and oppressive conditions.

Under the old law the Commission had the right to declare a rate unreasonable and to denounce it. All this bill added to that power was the power to substitute for the denounced rate a rate found by it to be just and reasonable. Now, we are met with a proposition—and I say it is a proposition not in the interest of the people, but in the interest of the railroads—that when the Commission shall substitute a rate for one found unreasonable the matter may be taken, upon an ex parte proceeding, into the courts and the rate suspended until the court has determined what it will do about it.

I believe the people demand and have a right to demand that when the Commission shall fix a rate that rate shall not be suspended except upon final hearing and determination by the court. More than that, they demand that the court shall keep its hands off the rate unless a constitutional right is involved or unless the order fixing it is ultra vires. These are the cardinal contentions of the people in this controversy. Both of these demands of the people have been turned down by the agreement on the other side, and their interests in these respects ignored and trampled under foot.

Mr. President, if this bill shall pass the Senate, as I take it it will, with no power to prevent the courts from suspending a rate until final hearing, with full power invested in the courts to review and to set aside every order that the Commission may make, this legislation will not be what the people want and expect and demand. A victory will have been won by somebody—I will not say who—but that victory will not be a victory for the people, it will be a victory for the railroads.

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Iowa. The Chair understood the Senator from North Carolina to withdraw his amendment.

Mr. SIMMONS. I withdraw temporarily the amendment offered by me.

Mr. McLAURIN. Mr. President, I desire to offer an amendment to the amendment of the Senator from Iowa.

The VICE-PRESIDENT. The Senator from Mississippi proposes an amendment to the amendment of the Senator from Iowa. It will be stated.

The SECRETARY. After the word "courts," the last word in the amendment of the Senator from Iowa, it is proposed to insert:

> No judge who owns any stock in a corporation engaged in interstate commerce shall be eligible to make a fiat for the issuance of any process or to sit in the trial in any case where such corporation is a party, or directly or indirectly interested, in the result of the trial of the case.

Mr. McLAURIN. Mr. President, I favored and voted for the amendment offered by the Senator from Wisconsin [Mr. LA FOLLETTE].

Mr. HALE. There is so much noise that it is impossible to hear the Senator. I ask that the amendment be again read.

The VICE-PRESIDENT. The amendment will again be stated by the Secretary.

The Secretary again read the amendment.

Mr. HALE. The amendment offered by the Senator is not, I think, in the exact language of the one that was tabled by the Senate, and therefore I have no doubt, not being identically the same, is in order. But I shall move, when the Senator has presented the case and it has been discussed by him—as I did in the other case—that it be laid on the table.

Mr. McLAURIN. Mr. President, I suppose the motion of the Senator from Maine [Mr. HALE] will carry. But I wish to state that the suggestion made by the Senator from Maine a while ago, when the amendment to the amendment that was

offered by the Senator from Wisconsin [Mr. LA FOLLETTE] was before the Senate, that the Senator has respect for the judiciary, is not to be understood as an assertion that no other Senator has respect for the judiciary except the Senator from Maine. The sentiment of respect for the judiciary is a sentiment of which no Senator has a monopoly. I myself have respect for the courts, and a very great respect for their judgment, their learning, their ability, and for their decisions; but I would not like to have a judge sitting in a case between me and my opponent where that judge was a partner in business with my opponent, and especially a partner in the business about which the litigation proceeds. If the judge who sits in the trial of a case in which I may be involved is to be interested in the business of either litigant, I would like to have his interest on my side, and I do not suppose any Senator would be willing to have his case tried before a judge who is a partner of the opposing litigant.

It is no reflection upon the court to say that the judge who sits shall be an impartial judge and shall have no interest in the litigation. It is no reflection upon the judge who sits in the case to say that he is human and that he is impressed with the frailties and weaknesses of human nature. The framers of the Constitution understood that men in very high and exalted positions were nothing more than men, and that they were impressed with the human nature that causes everyone to look out first for his own interest and the interests of those who are near to him. I will read what the framers of the Constitution provided with reference to Senators and Representatives:

> No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created or the emoluments whereof have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

This provision of the Constitution recognizes that all men, and it does not make any difference how high they may rise in official station, are imbued with human nature, which looks first to one's own interest. No judge ought to sit in a case where he is interested in a corporation which is a party to the litigation. No judge ought to make a fiat for the issuance of any process in any case where he is interested in the result of the litigation. For that reason I think this amendment ought to be adopted.

Mr. CLAY. Will the Senator from Mississippi allow me to ask him a question?

Mr. McLAURIN. Certainly.

Mr. CLAY. Is it not true that the amendment is the law now? Could any judge at the present time try a case in which a railroad was involved if he owned stock in it? Could not counsel disqualify him by calling attention to that fact? Would any judge with any self-respect want to try a case involving a railroad when he owned stock in the railroad company? Is not the amendment offered by the Senator from Mississippi the law at this time?

Mr. McLAURIN. It may be in some measure the law at this time, but I do not know whether it would exactly fit the case. But there can be no objection to providing that such a judge shall not issue a preliminary injunction.

There has been a good deal of discussion on the constitutional question, if there be such a question (and but for the fact that the opposing view is supported by the very able Senators who have supported it I would not think there was any question), whether Congress has the right to limit the power of a court to issue a preliminary injunction. If a court can not be limited in that particular, and if the Congress has no power over that—and I do not believe that is the constitutional construction which is correct—if that be so, and if the courts are to issue preliminary injunctions prohibiting the taking effect of the Commission's order or rate, then certainly the judge who does issue that injunction ought to be perfectly impartial, and there ought to be no objection to putting in this provision, because we are making a separate provision here for the courts to take jurisdiction of these questions, and some question may arise as to whether judges who have been prohibited heretofore from proceeding in cases where they are interested would have the right to grant a preliminary injunction or to make a fiat for the issuance of a preliminary injunction.

I think this amendment ought to be adopted. I do not desire to make any reflection upon the judiciary; I have not made any, and I do not make any, unless it is a reflection to say that judges are just like other people. It does not make any difference whether they are the humblest people in the land or the highest people in the land, all men are impressed alike with their own interests when it comes to deciding a question between themselves and others litigating with them.

Mr. FORAKER. I do not desire to address the Senate, but I wish to ask the Senator from Mississippi a question before he takes his seat. Does he think there is a judge of a United States court to be found anywhere throughout the length and breadth of the land who would sit in judgment in a case where he was personally interested?

Mr. McLAURIN. It is not for me to say whether or not a judge of that kind can be found. But I will ask the Senator, as an answer to that question, another question. Does he think that any Senator or Representative could be influenced in the creation of an office to which he might be appointed?

Mr. FORAKER. No; I do not think so. The Constitution——

Mr. McLAURIN. Then what was the necessity of putting the provision in the Constitution prohibiting a thing of that kind?

Mr. FORAKER. I would have to think so, because it is in the Constitution. But here we are free to legislate. The objection I have to the proposition of the Senator from Mississippi is not based upon the idea that I think a judge interested in a case should sit in judgment, but because I think it is pretty nearly an insult to the judiciary of the country to provide by legislation that they shall not do a thing so inappropriate that according to my observation and experience and belief there is not a judge in the whole United States who would think of doing it.

Mr. McLAURIN. I do not think it is any more of an insult to a judge of the Supreme Court of the United States, even to make laws to apply to him, than it is an insult to the humblest citizen to make laws to apply to him. I do not think, and I never have thought, that there ought to be any difference between the highest and the lowest citizen in the land when you come to making laws for their conduct.

Mr. FORAKER. Mr. President——

Mr. McLAURIN. I want fully to answer the question, in addition to what I have answered, by asking the Senator from Ohio another question. I want to say that I do not know whether there is a judge in the United States who would sit in a case in which he was interested, or whether there is a judge in the United States who would issue a fiat for the issuance of an injunction or any other process in a case in which he was interested. But if there is such a judge in the United States I want to have a law that will apply to him. I do not believe that judges are immaculate. I do not believe the judges are above the law any more than I believe any other citizen is.

Mr. FORAKER. The objection I have to the Senator's amendment is that he does assume not only that they are not immaculate, as he expresses it, but he assumes necessarily that there are judges who are violating their sense of propriety to such an extent that they have to be restrained. I think the Senator from Maine well said this morning that it is time here in the United States Senate to stop doing that which is necessarily in itself an offense to a coordinate branch of the Government that has certainly enjoyed the confidence, and deservedly so, of the American people for more than a hundred years of the existence of the American nation.

Mr. McLAURIN. I do not assume any such thing, but I assume that if there is such a judge, he ought not to be permitted to sit. I do not any more assume in this amendment that there are such judges than the law of Congress assumes that Senators and Representatives will be guilty of a felony if they go before the Department and practice there for pay. There is no more assumption that a judge will sit upon the bench in a case in which he is interested, because there is a provision made by law that he shall not do it, than there is an assumption that a Senator or Representative in Congress will practice before the Department for pay when there is a law that will send him to the penitentiary if he does it.

Mr. HALE. Mr. President, the proposition is monstrous that a Federal judge of a great court—and all United States courts are great courts—would sit in a case and pass upon it when he is a partner with one of the sides in controversy and has an interest in the profits of that side. Any judge who would so forget the duties of his great office and would have any share in such a scandal and such a corruption is to be reached by other processes. He is subject under the Constitution to impeachment, and will be turned from his high place on impeachment, as judges have been heretofore for less grievous offenses. It is not comporting with the dignity of legislation here that the Senate shall pass any proposition as an amendment to this bill which assumes or admits for a moment that the judge of a United States court would be found in such a position. I do not think I need to say more. I move to lay the amendment on the table.

The VICE-PRESIDENT. The question is on agreeing to the motion of the Senator from Maine to lay on the table the amendment proposed by the Senator from Mississippi.

Mr. McLAURIN. On that I demand the yeas and nays.

Mr. MORGAN. Mr. President, I think the spirit of the amendment offered by the Senator from Mississippi is correct. But the law is full of it now, and the judges always apply it when any suggestion is made, even a slight intimation that they may possibly have an interest in the suit by relationship or by personal interest, etc. But it seems to me that the amendment——

Mr. HALE. I ask the Chair——

The VICE-PRESIDENT. The Senator from Maine has moved to lay the amendment on the table.

Mr. MORGAN. I ask the Senator from Maine to withdraw that motion for a moment.

Mr. HALE. Certainly, if the Senator from Alabama desires to say anything.

Mr. MORGAN. It seems to me there is an objection to the amendment offered by the Senator from Mississippi to this effect, that it produces a disqualification in the judge upon the existence merely of the fact of his interest, more or less direct or remote, in some corporation or some company that is concerned in the litigation. Facts of that sort may exist, which, if they were brought to the attention of the judge, would at once require a judgment on his part that he ought to retire, that he ought to recuse himself from the judgment in the case. But suppose a case passes into judgment, and it is afterwards shown, in a collateral attack upon that judgment, that these disabilities did actually exist. There your judgment becomes void, because of proof of the fact that the disabilities did exist. That is dangerous legislation. If a judge by misadventure or even misbehavior should render a judgment in court, and it should afterwards become ascertained that he was disqualified, the judgment does not thereby become void. No collateral attack can be made upon it.

In my own State I remember a case where a man was condemned for punishment for a felony of very high grade, and the question of the judge's qualification to sit on the bench was then pending in some of the courts, and was afterwards determined against him. The question was raised upon a motion of some kind—I forget the precise proceeding—that the judgment was void because the judge had been declared as being disqualified at the time he pronounced it. The supreme court of Alabama held that the judgment was valid notwithstanding his alleged disabilities and notwithstanding they had been so determined against him.

It is for the sake of preserving the validity of judgments that I make this question. I do not want to make a law by positive enactment of the statute in such shape that any party can come in after judgment has been rendered and attack it collaterally by proving that in fact certain disqualifications existed because of this remote or direct interest of the judge in different corporations. I think it is dangerous legislation.

Mr. McLAURIN. Will the Senator from Maine withhold his motion long enough for me to read a section of the Revised Statutes and ask him a question?

Mr. HALE. Yes.

Mr. McLAURIN. Section 5499 of the Revised Statutes reads:

SEC. 5499. Every judge of the United States, who in anywise accepts or receives any sum of money, or other bribe, present, or reward, or any promise, contract, obligation, gift, or security for the payment of money, or the delivery or conveyance of anything of value, with the intent to be influenced thereby in any opinion, judgment, or decree in any suit, controversy, matter, or cause depending before him, shall be fined and imprisoned at the discretion of the court, and shall be forever disqualified to hold any office of honor, trust, or profit under the United States.

I will ask the Senator—and the same question would apply to the Senator from Ohio—if he supposes that the Congress which enacted that law was making a reflection, a direct charge, upon the judges and judiciary of the country?

Mr. FORAKER. No; I do not. That was statutory provision against the commission of a crime.

Mr. BAILEY. It is more likely that a judge would commit an impropriety than that he would commit a crime.

Mr. FORAKER. I intended to call attention a moment ago to the fact that it is the law, as well established as though written in so many words, that no judge shall sit in judgment in his own case.

Mr. McLAURIN. If the Senator will allow me, that is a very different proposition from what the Senator urged as an objection to this amendment.

Mr. HALE. Mr. President, I shall have to insist upon my motion.

Mr. McLAURIN. The objection was that it was a reflection upon the judges even to offer the amendment.

Mr. FORAKER. I meant a reflection under all the circumstances. It is already provided in the statute, section 615, to which my attention has just been called——

Mr. McLAURIN. If the Senator will allow me——

Mr. FORAKER. I ask to have that section read before the motion to lay on the table is insisted upon.

Mr. HALE. Mr. President, I seem to be powerless.

The VICE-PRESIDENT. Does the Senator from Maine insist upon his motion?

Mr. HALE. I do.

The VICE-PRESIDENT. The Senator from Maine moves to lay on the table the proposed amendment of the Senator from Mississippi to the amendment. Upon that question the yeas and nays are demanded. Is there a second?

The yeas and nays were ordered; and the Secretary called the roll.

Mr. CLARK of Wyoming. I wish to announce the unavoidable absence of my colleague [Mr. WARREN], and to announce his pair with the Senator from Mississippi [Mr. MONEY]. I desire that this announcement shall stand for the remainder of the day.

The result was announced—yeas 49, nays 23, as follows:

YEAS—49.

Aldrich	Crane	Hansbrough	Perkins
Alger	Cullom	Hemenway	Piles
Allee	Dick	Hopkins	Platt
Allison	Dillingham	Kean	Scott
Ankeny	Dolliver	Kittredge	Smoot
Brandegee	Dryden	Knox	Spooner
Bulkeley	Elkins	Lodge	Sutherland
Burkett	Flint	Long	Teller
Burnham	Foraker	McCumber	Warner
Burrows	Frye	Millard	Wetmore
Carter	Fulton	Morgan	
Clapp	Gamble	Nelson	
Clark, Wyo.	Hale	Nixon	

NAYS—23.

Bailey	Daniel	La Follette	Overman
Berry	Dubois	Latimer	Rayner
Blackburn	Foster	McCreary	Simmons
Clarke, Ark.	Frazier	McEnery	Taliaferro
Clay	Gallinger	McLaurin	Tillman
Culberson	Gearin	Martin	

NOT VOTING—17.

Bacon	Depew	Newlands	Stone
Beveridge	Gorman	Patterson	Warren
Burton	Heyburn	Penrose	
Carmack	Mallory	Pettus	
Clark, Mont.	Money	Proctor	

So Mr. MCLAURIN's amendment to the amendment was laid on the table.

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Iowa [Mr. ALLISON].

Mr. DANIEL. I move an amendment. I move to insert, after line 13, page 9, of the amendment, the following words:

In any such suit the bill or other complaint shall be accompanied by a full copy of the record made in the hearing before the Interstate Commerce Commission and of all the testimony in the case.

The VICE-PRESIDENT. At what point does the Senator from Virginia propose his amendment?

Mr. DANIEL. Immediately after line 13, page 9, at the bottom of the provision as to the venue of suits.

The VICE-PRESIDENT. Page 9 of what print?

Mr. DANIEL. Page 9 of the amendments "intended to be proposed by Mr. CULLOM for Mr. ALLISON and by Mr. RAYNER" May 8.

The VICE-PRESIDENT. The amendment proposed by the Senator from Virginia to the amendment of the Senator from Iowa will be read.

The SECRETARY. After the word "courts," at the end of the amendment proposed by the Senator from Iowa, insert:

In any such suit the bill or other complaint shall be accompanied by a full copy of the record made in the hearing before the Interstate Commerce Commission and of all the testimony in the case.

Mr. DANIEL. Mr. President, I have heretofore set forth the considerations which appear to my mind to commend such an amendment to the bill. I shall not repeat them except with great brevity.

Attention has been called to the fact frequently in this debate that in the great majority of the cases which have been brought in equity to set aside the orders of the Interstate Commerce Commission a new case has been made a different case from that which was before the Commission when they determined it. Attention has been also called to the fact that in thirty-six of forty-two cases in which the court made different decisions from those of the Interstate Commerce Commission it was upon the new case made and not upon the case which had been heard by the Commission. The production of the record with the bill of complaint in the suit in equity which is contemplated will permit the court to see in taking up the case exactly upon what testimony the decision had been made.

In the bill which was prepared by the Interstate Commerce Commission and sent to the Committee on Interstate Commerce, or which, at least, that committee had before it, a process was

recommended and put down by the committee after the fashion of the old English bill of certiorari, and in one of its sections it was provided that the respondent in such suit should present the record. Now, instead of leaving it for the respondent to present the record, it is proposed here that the carrier complaining of the decision, seeking in equity to bring about a different one, shall lay before the court the full record and all the testimony upon which the Interstate Commerce Commission gave its order or decree.

It is economical to do this, Mr. President, and avoids repeating the same thing under process of law. If depositions have already been taken, they will be produced without the necessity of taking them again. If exhibits from records and statistics had been laid before the Interstate Commerce Commission, the court will receive them without the expense, trouble, and delay of going over the same road a second time. One great public and private interest will be subserved in this provision, the great object which is sought to be obtained by various of the provisions of the Allison amendment—the prevention of delay—will be attained.

We are not, Mr. President, without precedents, and in Federal jurisprudence for this action I have already called attention to the fact that in the settlement of titles of thousands—I may say of millions—of acres of public land in California, as long ago as 1851, Congress provided just such a procedure. I have laid before the Senate in previous remarks a copy of the statute in which Congress required that a transcript of the record should be taken to the appellate court with the record of what the Commissioners had done.

There are some very commendable provisions in this Allison amendment, especially that which relates to the interlocutory order or decree suspending or restraining the enforcement of an order of the Commission. It is provided in a part of one of the Allison amendments that no such order or decree shall be made without five days' notice to the Commission. This is a new rule of practice and one which is evidently directed to prevent delay. It is also provided that the case shall be heard, if I mistake not, before the interlocutory injunction is granted.

If this be the case and if this be the order of procedure which Congress is so wisely amending to suit this case, it will be much aided and subserved by taking up the record, so that the whole case anterior to that time, at least, will be seen in the very opening of the procedure without the necessary delays which would otherwise arise in taking again the same depositions, in getting again the same exhibits, and in going again over the same long and prolix road which had been pursued.

Mr. ALLISON. Will the Senator from Virginia yield to me for a moment?

Mr. DANIEL. Yes, sir; I will yield the floor to the Senator from Iowa. I am done with what I have to say.

Mr. ALLISON. I do not wish to occupy time except to suggest to the Senator that these are suits which are to be commenced by the carrier——

Mr. DANIEL. I understand that.

Mr. ALLISON. And against the Interstate Commerce Commission.

Mr. DANIEL. That is right.

Mr. ALLISON. It seems to me it would be the regular course for the Interstate Commerce Commission to file with their answer all the proceedings had before the Commission and that that will be done without a statutory provision. It is perfectly sure that the entire record must go into the court, and I suggest to the Senator that the Interstate Commerce Commission will be quite sure that it does go into the court.

Mr. RAYNER. I should like to suggest, if the Senator will permit me, that there is no power at all to bring this record into court. Under the present law the record is prima facie evidence. In this proposed law it is only prima facie evidence as to a money demand. If the case is tried de novo, even if you only try it under a constitutional question, there is no way to get the record into court that I know of. I may be mistaken, but I submit it to the Senator from Iowa.

Mr. ALLISON. It is perfectly sure that the record ought to be in court; I quite agree to that. But it seems to me the natural way to bring the record in will be by the Interstate Commerce Commission when they file their answer to the complaint in the court or in their answer to an application for an injunction by way of showing that the injunction should not be granted.

I agree with the Senator from Virginia that there ought to be a full record made in these cases. The bill as amended does not specifically provide for that as does the present law, because under section 14, if I remember aright, of the existing law there must be a full record kept, including the testimony.

Mr. RAYNER. That is right.

Mr. ALLISON. But section 14 has been modified in the bill so as to require only the decision of the Interstate Commerce Commission. So if the Senator from Virginia will withhold his amendment until later we will have time to examine that question. I think that in some way the record should be brought before the court, but the carrier will not be in possession of it, and therefore he may be embarrassed in securing possession. I am in favor of having a complete record in the court, whether on an application for injunction or upon the final trial of the case before the court: and I think it ought to be done.

Mr. RAYNER. This is a question of some importance. What power would the court have to examine the testimony? If a case goes into court, it is a new case that is tried; it is not a review; it is not an appeal; it is entirely an original case.

Mr. ALLISON. It is an original case.

Mr. RAYNER. Now, what power would the court have unless you give it the power. And that power I consider to be very questionable unless you give it the power. What right would a court have to consider the testimony taken before the Commission in hearing an adjudication of the case before the court?

Mr. ALLISON. That is a question I would defer to the Senator from Maryland and the Senator from Virginia to answer rather than undertake to answer it myself; but if we are to have this record carried into the case in the court compulsorily, then we should also provide in some place in section 14 that the record shall be taken and presented to the court, and when presented shall become prima facie evidence. I agree to that. So if the Senator would allow this to go over, that proper amendment or amendments may be made covering that case, I should be very glad.

Mr. DANIEL. May I inquire how many minutes more I have?

Mr. ALLISON. I beg pardon; I thought the Senator had finished. I have nothing further to say.

Mr. DANIEL. I was very glad to yield any time the Senator from Iowa wished to occupy.

The VICE-PRESIDENT. The Senator from Virginia has four minutes more.

Mr. DANIEL. Mr. President, I have consulted with the Interstate Commerce Commissioners on this subject. I have studied this matter with all the aid of books that I could find upon the subject. The Interstate Commerce Commissioners inform me that it is their custom to furnish the record, and that it will be a very convenient matter to do so; that there is no impediment to its being readily and easily done. I am very glad to find that this idea has struck so favorably such an experienced and practical mind as that of the Senator from Iowa.

There is one other idea alone which I will refer to now. The Supreme Court in several cases, which I could cite here if I chose to take the time of the Senate to read them, has commented upon the fact that carrier companies frequently fail to put in their testimony before the Interstate Commerce Commission, and then show their full hand in a case de novo before the court; and it has arisen from the fact that the courts have taken jurisdiction of this matter through the old channels of equity jurisdiction and according to the usages in the growth of equity as to a different class of cases, whereas herein we have a very peculiar class of cases, partly administrative and partly judicial, which never can be fully and appropriately reached without that assistance from new legislation which this Government has been accustomed to accord whenever a new class of cases arose. In this particular I am following what is already the precedent of Congress and what has been passed on by the Supreme Court of the United States; and I cited at least three cases in previous remarks in which they had commented upon a like procedure.

I will withdraw my amendment, as suggested by the Senator from Iowa, so that this matter may receive the fuller attention of Senators upon the other side, hoping that it may be thereby matured.

Mr. ALLISON. I will say to the Senator from Virginia that under the existing law the Commission is bound to make a finding of fact, and the testimony and their finding of fact and their decision go to the court. So I think this is a necessary provision. I think it should be a little broader than is now suggested by the Senator, and if he will withdraw the amendment I will be glad to call his attention to what I think ought to be done in the matter.

Mr. DANIEL. Just this additional thought, Mr. President. It is important that in the first blush of the case, especially when suspending orders are in view, the court that takes up that case

should have an opportunity to see its full history without waiting for a response.

The VICE-PRESIDENT. Does the Senator from Virginia withdraw his amendment to the amendment?

Mr. DANIEL. I withdraw the amendment to the amendment.

The VICE-PRESIDENT. The amendment to the amendment is withdrawn. The question recurs on the amendment proposed by the Senator from Iowa [Mr. ALLISON].

Mr. SIMMONS. Mr. President, at the suggestion of the Senator from Iowa, I withdraw the amendment which I had offered a while ago, stating that I would examine his suggestion that there was a more appropriate place in the bill for that amendment. From the result of that examination I think the appropriate place for the amendment is the section now under consideration. I wish to renew that amendment with some qualifications, and I will ask the Secretary to change it as I may suggest. Strike out the words "and the evidence upon which the same was made" and strike out the words "taken as prima facie establishing" and insert:

Accorded by the court or judge the same degree of verity as that accorded in a court of equity to the finding of a special master as establishing.

Mr. CULLOM. Does the Senator from North Carolina withdraw his amendment until the Allison amendment is disposed of?

Mr. SIMMONS. I offer a modified amendment.

The VICE-PRESIDENT. The amendment of the Senator from North Carolina will be read.

The Secretary read as follows:

Whenever an application for a preliminary injunction or interlocutory order is made in any such suit, for the purpose of such motion the order of the Commission shall be accorded by the court or judge the same degree of verity as that accorded in a court of equity to the finding of a special master, as establishing that the rate or charge fixed in said order is just and reasonable.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from North Carolina to the amendment proposed by the Senator from Iowa.

Mr. SIMMONS. On that I ask for the yeas and nays.

The yeas and nays were not ordered.

The amendment to the amendment was rejected.

Mr. SIMMONS. I now desire to offer the amendment as originally offered by myself.

The VICE-PRESIDENT. The Senator from North Carolina proposes an amendment, which will be stated by the Secretary.

The SECRETARY. After the word "courts," the last word in the amendment proposed by the Senator from Iowa, insert:

Whenever an application for a preliminary injunction or interlocutory order is made in any such suit for the purpose of such motion, the order of the Commission and the evidence upon which the same was made shall be taken by the court as prima facie establishing that the rate or charge fixed in said order is just and reasonable.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from North Carolina [Mr SIMMONS] to the amendment of the Senator from Iowa [Mr. ALLISON]. [Putting the question.] The noes have it, and the amendment to the amendment is rejected.

Mr. SIMMONS. I ask for the yeas and nays, Mr. President.

The yeas and nays were not ordered.

The VICE-PRESIDENT. The question now is on agreeing to the amendment proposed by the Senator from Iowa [Mr. ALLISON].

The amendment was agreed to.

Mr. BACON. I offer an amendment, to come in immediately after the amendment which has just been adopted.

The VICE-PRESIDENT. The amendment proposed by the Senator from Georgia will be stated.

The SECRETARY. After the amendment which has just been adopted it is proposed to insert:

In case any application, motion, or prayer for such interlocutory or preliminary order or decree shall be made by any party to such complaint, other than the carrier or carriers to be affected by the rate or charge, practice, or regulation, in question prescribed by the Commission, then and in that case said carrier or carriers shall, before the hearing of said application, motion, or prayer, by appropriate order and process, be made a party or parties to the said complaint in equity to abide such orders and decrees as may be made by the court pending said cause and the final judgment and decree in the same. Upon the granting of any interlocutory or preliminary order or decree restraining, setting aside, suspending, or modifying any rate or charge, regulation, or practice prescribed by the Commission, before said interlocutory or preliminary order or decree shall be operative or of any effect, the carrier, person, or corporation seeking such order or decree shall deposit in the registry of the court and subject to the order thereof, as hereinafter specified, such an amount as may be required in the discretion of the court, either in lawful money of the United States or in lawful bonds of the United States at the par value thereof. It shall, in addition thereto, be the duty of the said carrier or carriers to be affected by the rate or charge, practice, or regulation in question to pay into the registry of the court, subject to its order, the sums of money as herein specified, and to effectuate the same, at the time of granting such preliminary or interlocutory order or decree, the court shall by appropriate order require the said carrier or carriers affected by the rate or charge, practice, or regulation in question prescribed by the Commission to pay into the registry of the court and subject to its order, on or before the 10th day of each month pending the said interlocutory or preliminary order or decree, in lawful money of the United States, all money received by such carrier or carriers during the calendar month next preceding said date and subsequent to the date of filing said complaint from the collection made for all shipments upon the rates and charges in question in excess of the rates and charges as fixed and determined by the order of said Commission. On the said 10th day of each month there shall be filed in court by said carrier or carriers, through their duly authorized officer or officers, a statement under oath of the shipments on account of which said collections have been made, setting forth in detail the character and amounts of said shipments, the point of each shipment and of its destination, the names of the consignors and consignees, the amount collected from each for said shipment, and separately the excess collected as aforesaid, and the names of the persons from whom collected. The said court at the time of granting said temporary or interlocutory order or decree, and in its discretion thereafter from time to time, shall require the said carrier or carriers to give such bond and security as may be deemed sufficient to insure the filing of said reports and the payment of said amounts; and in addition thereto shall, by the orders and processes of a court of equity, enforce summarily the prompt payment of said amounts into the registry of the court, from which orders of the court there shall be no appeal. Any refusal or failure to comply with said orders and to pay into the court the said sum of money as herein provided shall constitute a contempt of the court. For the purpose of said orders the court shall be deemed to be always in session. From said orders or decrees for the payment into court of the said amounts no appeal shall lie.

If upon the final decree in said cause the rate or charge prescribed by the Commission shall be adjudged to be valid, the court shall, by proper orders and decrees out of the said deposit or the proceeds of the sale thereof and the additional payments made into the court by the said carrier or carriers, caused to be paid to each of the persons from whom collections have been made the several amounts paid by each of them to said carrier or carriers in excess of the said rate or charges prescribed by the Commission, with interest thereon from the date of each payment at the rate of 6 per cent per annum.

If upon the final decree in said cause the rate or charge prescribed by the Commission shall be adjudged to be invalid and the enforcement of the same shall be enjoined, the court shall, by proper orders and decrees, direct to be paid over to the said carrier or carriers the sum of money thus theretofore deposited and paid into the registry of the court, less such amounts for costs as the court, in its discretion, under the circumstances of any case, may in justice and equity deem to be reasonably chargeable to said carrier or carriers.

Pending said cause, it shall be within the power of the court, by appropriate proceedings, either in open court or through a master in chancery or commissioner, to examine into the correctness of the reports herein required to be made under oath by the said carrier or carriers, and to this end to examine, under oath, their officials and employees, and to require, by order, the production of the books and papers of said carrier or carriers.

If, upon the said examination, it shall be adjudged that the said carrier or carriers have not made complete returns of all of said shipments and the amounts collected thereon, as herein specified, the court shall, by order, require the said carrier or carriers to pay into the registry of the court, in lawful money of the United States, the amount received on account of said shipments in excess of the amounts theretofore reported to the court.

Mr. BACON. Mr. President, I only desire to say a few words. I shall not take the time of the Senate to discuss this amendment at length. It has been printed and on the desks of Senators for weeks and, of course, they are familiar with it. I think it very important, and I shall be glad if those who have a majority in this body will adopt it and engraft it upon the bill.

There are two or three things which the amendment will certainly accomplish. If this amendment be adopted, there will never be a frivolous case brought against the Interstate Commerce Commission. No company will ever attempt to seek to set aside the orders of the Commission unless there is a very serious grievance, in their opinion, from which they seek to be freed.

Another very important feature in regard to this amendment, or rather one which will result or flow from it, would be that there would be certainly no delay on the part of railroad companies in the prosecution of a case. They would, on the contrary, have every reason to be stimulated to the highest diligence and the utmost speed.

Of course I recognize the fact that it is not a complete remedy, for the reason that the consumer, who would largely suffer from these increased rates, possibly, and not only possibly, but in fact, would not receive his part of the compensation which would be paid into the court; but it goes a long way in that direction. Aside from the fact of the protection of the public, the two things I have mentioned are of the utmost importance, and there is nothing in the bill as it now stands which would accomplish either of those purposes, to wit, a deterrent against frivolous suits and a stimulus to the highest expedition in the prosecution of a suit when brought.

The VICE-PRESIDENT. The question is on the amendment proposed by the Senator from Georgia [Mr. BACON].

The amendment was rejected.

Mr. ALLISON. I now offer the amendment which I send to the desk.

The VICE-PRESIDENT. The amendment proposed by the Senator from Iowa will be stated.

The SECRETARY. On page 17, line 18, after the word "suits," it is proposed to insert the words "including the hearing on an application for a preliminary injunction."

The amendment was agreed to.

Mr. ALLISON. I offer another amendment which I send to the desk.

The VICE-PRESIDENT. The amendment proposed by the Senator from Iowa will be stated.

The SECRETARY. On page 18, line 6, after the word "causes," it is proposed to strike out the period and insert a colon and the following language:

Provided, That no injunction, interlocutory order, or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing, after not less than five days' notice to the Commission. An appeal may be taken from any interlocutory order or decree granting or continuing an injunction in any suit, but shall lie only to the Supreme Court of the United States: *Provided further*, That the appeal must be taken within thirty days from the entry of such order or decree, and it shall take precedence in the appellate court over all other causes, except causes of like character and criminal causes.

Mr. OVERMAN. I offer an amendment to the amendment of the Senator from Iowa [Mr. ALLISON], which I send to the desk.

The VICE-PRESIDENT. The amendment proposed by the Senator from North Carolina will be stated.

Mr. OVERMAN. In the amendment of the Senator from Iowa are the following words:

Provided, That no injunction, interlocutory order or decree, suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing, after not less than five days' notice to the Commission.

I wish to amend the amendment by substituting for those words the following:

Provided, however, That no rate or charge, regulation, or practice prescribed by the Commission shall be set aside or suspended by any preliminary or interlocutory decree or order of court or judge without first giving reasonable notice to the Commission of the time and place of moving to set aside the same, nor until bill of complaint and answer or demurred filed and hearing thereon had.

Mr. President, we have heard very much said in the newspapers and upon this floor about the Overman amendment. It has been suggested by a Senator near me that it is the Overman amendment with the Overman left out. The amendment just introduced by the Senator from Iowa is practically my amendment, except it has eviscerated the very meat contained in the amendment introduced by myself. It leaves out the words "answer and bill of complaint." I state here, Mr. President, that if this amendment is adopted it will be no more than the law as it now stands. Section 718 of the Revised Statutes provides as follows:

SEC. 718. Whenever notice is given of a motion for an injunction out of a circuit or district court, the court or judge thereof may, if there appears to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion; and such order may be granted with or without security, in the discretion of the court or judge.

This amendment has been under discussion in the Senate for more than sixty days, and I have yet to hear one Senator say that it was not a proper amendment to this bill and that it was not constitutional. Now, sir, under the amendment as introduced by the Senator from Iowa, if adopted, any man can go, as he can now, before the court and simply upon an ex parte petition get out an injunction. Upon a hearing? A hearing of what? Upon a petition? My amendment provides that there shall be a petition filed, that there shall be an answer filed, that there shall be a hearing, that there shall be an issue joined, and the whole matter be brought before the court upon its merits. The provision of the amendment of the Senator from Iowa requires that three judges shall hear it—this is a wise provision—and that there may be an appeal directly to the Supreme Court. Under the amendment of the Senator from Iowa any railroad lawyer can present his petition and allege that property of the railroad is being taken without just compensation. It goes before the judges. There is no answer filed. Then it is heard upon ex parte statements, and it goes immediately to the Supreme Court upon these ex parte statements. The issue is not joined; it is not heard upon its merits. This amendment, which will prevent these ex parte injunctions, has been indorsed by the President himself in a telegram sent throughout the country. I ask that this amendment be adopted in lieu of the amendment proposed by the Senator from Iowa.

The VICE-PRESIDENT. Does the Senator from North Carolina propose to strike out all of the amendment?

Mr. OVERMAN. No, sir; I said in lieu of certain words which I stated.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from North Carolina to the amendment of the Senator from Iowa.

The amendment to the amendment was rejected.

The VICE-PRESIDENT. The question recurs on agreeing to the amendment proposed by the Senator from Iowa.

Mr. BAILEY. Mr. President, I would be a little less than human, or perhaps it would be better to say that I would be a little more than human, if I did not express my great satisfaction at seeing the Republican party at last accept my contention that Congress can limit the injunctive process of inferior Federal courts. I know that the Senate is impatient for a vote, and yet I venture to believe that they will indulge me while I recall for a moment the argument which was made against my proposition, and then test that argument by this proposition.

The Senator from Wisconsin [Mr. SPOONER] and the Senator from Pennsylvania [Mr. KNOX] both admitted that Congress could control the jurisdiction of the court, though that proposition itself was stubbornly disputed in the beginning. But those Senators said—they said it in the open Senate, and other Senators said it out of the Senate—that the moment Congress gave jurisdiction to a court over a case the judicial power of the Constitution attached, and Congress could not limit or control that judicial power. Does this amendment of the Senator from Iowa conform to that argument? Let us see.

No injunction shall be granted except upon a hearing after not less than five days' notice.

Now, mark you, Mr. President, if it is depriving a carrier of its property without due process of the law, or if it is taking its property without just compensation to deny a preliminary injunction, then Congress can no more deny it for five days than it could for five years. The Constitution does not say that a person shall not be deprived of his property without due process of law for an unreasonable time; the Constitution does not say that a man shall not be deprived of his property without just compensation for a month or a year, but that he shall not be deprived of it at all without due process or without just compensation. It is as much a violation of the Constitution to take a man's property for an hour as it is for a year, and it is as much a violation to take it for a year as it is to take it for a century.

I have contended all the time, and I contend now, and I am supported in that contention by this amendment, that all the constitutional requirement of due process demands is that the carrier shall have one fair trial for its property rights. I have contended that we can take its property and pay it a just compensation as ascertained by the Commission and that we can use it until the compensation has been established to be less than just upon a final trial. Under this amendment the carrier can not set aside the Commission's rate by alleging that it is less than a just compensation or less than a just and reasonable rate. Shippers can go on and take the carriers' services for five days, it is certain, because the court can not enjoin it until after notice of five days has been given, and then they must wait for a hearing. Senators, how long will it take the Commission and the carrier to prepare for that hearing? One week or one month? The principle is the same, and so it is this amendment asserts the power——

Mr. CLARKE of Arkansas. Judge Brewer said in the Tompkins case that it could not be done with three weeks of diligent labor.

Mr. BAILEY. I thank the Senator for his suggestion. The Senator from Iowa agrees with me that the court can be prevented from issuing preliminary injunction. The only difference between the Senator from Iowa and myself is how long will we prevent it. As the Senator from Colorado [Mr. TELLER] well says, if we can prevent it for five days, we can prevent it for five weeks; and if we can prevent it for five weeks, we can prevent it for five months, or five years; and so it is, that, after all, the difference between the Senator and myself is one of policy and not of principle. I have had some trouble in satisfying myself as a matter of justice that the Commission's rate ought always to be kept in effect, though I have never had any trouble as a matter of law, and I now welcome to my support the senior Senator from Iowa and his distinguished colleagues.

The complaint of the junior Senator from Iowa against those constitutional lawyers who are always saying that things are unconstitutional I leave him to settle with his political friends on his own side. I have not been saying that this bill or any of its provisions are unconstitutional. I have been offering perfectly constitutional propositions, and the lawyers about whom he complains are the ones who have been inveighing against my propositions as unconstitutional.

But, Mr. President, I want to remind the Senator from Iowa that one of the most important enactments of Congress in recent years was held unconstitutional, and I remember advising the friends of the Wilson bill to take out of it that provision which laid an income tax upon the interest received from

county, State, and municipal bonds, and they answered my suggestions by saying that I was trying to exploit my doctrine of State's rights. But yet when the Supreme Court come to review that question it unanimously held that feature of the Wilson bill unconstitutional. I make no apology for the constitutional lawyers; they need none. They are generally attacked by the men who can not understand their arguments. Some men attack them in a jocular way, as the junior Senator from Iowa did. He was not seriously complaining of them, I assume. If we did not have them here, about half the laws we pass would go into the waste basket of the Supreme Court, because that great tribunal can not amend them for us, and unless we send them there perfected they hold them void. I shall never complain of any Senator in this body or elsewhere who strives with persistence to make the legislation of Congress conform to the Constitution of this country. The only constitutional lawyer against whom I complain is the one who says that my proposition is unconstitutional and then proposes one just like it for himself. Against all such I level my criticism.

Mr. President, I believe no Senator in this body will vote against this proposition, and yet I have vanity, if you call it that, enough to want to see them all recorded on it. They have all been recorded in the same way and all in the right way, as I recall it, only on the pipe-line amendment. I will not detain the Senate by further discussion, but I demand the yeas and nays on this amendment.

The VICE-PRESIDENT. The question is on the amendment proposed by the Senator from Iowa [Mr. ALLISON].

Mr. TELLER. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. CULBERSON. I rise merely to inquire whether the proposition of the Senator from North Carolina [Mr. OVERMAN] is pending?

The VICE-PRESIDENT. It was disagreed to.

Mr. CULBERSON. Very well.

The VICE-PRESIDENT. The question is on the amendment of the Senator from Iowa [Mr. ALLISON]; on which the yeas and nays have been ordered.

Mr. CULBERSON. Let that amendment be reported again, Mr. President.

The VICE-PRESIDENT. The Secretary will again state the amendment of the Senator from Iowa at the request of the Senator from Texas.

The SECRETARY. On page 18 of the bill, line 6, after the word "causes," it is proposed to insert:

Provided, That no injunction, interlocutory order, or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing after not less than five days' notice to the Commission. An appeal may be taken from any interlocutory order or decree granting or continuing an injunction in any suit, but shall lie only to the Supreme Court of the United States: *Provided further*, That the appeal must be taken within thirty days from the entry of such order or decree, and it shall take precedence in the appellate court over all other causes, except causes of like character and criminal causes.

The Secretary proceeded to call the roll.

Mr. SPOONER (when his name was called). My pair with the Senator from Tennessee [Mr. CARMACK] has been transferred to the Senator from Pennsylvania [Mr. PENROSE], and I will vote.

Mr. TILLMAN. The Senator from Wisconsin can vote. I am going to vote "yea."

Mr. SPOONER. I vote "yea."

The roll call having been concluded, the result was announced—yeas 73, nays 3, as follows:

YEAS—73.

Aldrich	Crane	Hale	Overman
Alee	Culberson	Hansbrough	Perkins
Allison	Cullom	Hemenway	Piles
Ankeny	Daniel	Hopkins	Platt
Bacon	Dick	Kean	Rayner
Bailey	Dillingham	Kittredge	Scott
Berry	Dolliver	Knox	Simmons
Beveridge	Dryden	La Follette	Smoot
Blackburn	Dubois	Latimer	Spooner
Brandegee	Elkins	Lodge	Stone
Bulkeley	Flint	Long	Sutherland
Burkett	Foraker	McCreary	Taliaferro
Burnham	Foster	McCumber	Teller
Burrows	Frazier	McLaurin	Tillman
Carter	Frye	Martin	Warner
Clapp	Fulton	Millard	Wetmore
Clark, Mont.	Gallinger	Nelson	
Clark, Wyo.	Gamble	Newlands	
Clay	Gearin	Nixon	

NAYS—3.

Clarke, Ark.	Morgan	Pettus

NOT VOTING—13.

Alger	Gorman	Money	Warren
Burton	Heyburn	Patterson	
Carmack	McEnery	Penrose	
Depew	Mallory	Proctor	

So Mr. ALLISON's amendment was agreed to.

Mr. ALLISON. I ask that the next amendment may be read. It is really a formal amendment.

The SECRETARY. On page 19, line 22, after the word "order," strike out the remainder of the section in the following words:

Whenever an order of the Commission made in pursuance of section 15 as amended, other than an order for the payment of money, shall have been complied with for the period of three years such order shall not thereafter be in force as against the carrier so complying therewith.

Mr. LODGE. Mr. President, I was unfortunately out of the Chamber and did not have the felicity of hearing the statement which was read in the Senate by the Senator from South Carolina [Mr. TILLMAN]. When I returned to the Chamber I was told about the statement, and there were repeated to me some of the statements that were contained in it. One of the statements attributed to Mr. Chandler in regard to the Senator from Ohio [Mr. FORAKER], in regard to the Senator from Wisconsin [Mr. SPOONER], and in regard to the Senator from Pennsylvania [Mr. KNOX] struck me as so extraordinary, and seemed to me on its face so unlikely to be correct and as so unjust to the three Senators involved that I took it upon myself to go to the office of the stenographers and get the sentence accurately copied out. The sentence to which I refer from the stenographer's notes is this:

Mr. Chandler said the President had stated that he had come to a complete disagreement with the Senatorial lawyers, who were trying to injure or defeat the bill by ingenious constitutional arguments, naming Senator KNOX, in addition to Senators SPOONER and FORAKER.

I then took the liberty of calling up the White House by telephone; it was the most rapid way of reaching the President, and I took down the statement which he made to me over the telephone, and which I will now read to the Senate, because I think it is important that it should go to the country with the allegation which I have just read.

I read to the President over the telephone the sentence which I have just read to the Senate, and he said in reply that the statement which I had read to him, attributed to him by Mr. Chandler, was a deliberate and unqualified falsehood; that Senator FORAKER's name was never mentioned at all in conversation; that Senator SPOONER's name was only mentioned by him to express a cordial approval of Senator SPOONER's amendment. "As to Senator KNOX, I said that I did not agree with a portion of his proposed amendment, but that I thought he had made out a very strong argument for asserting affirmatively the jurisdiction or authority of the court."

I think, Mr. President, that it is a mere act of justice to allow this statement to go out with that which was read and attributed to the late Senator from New Hampshire, Mr. William E. Chandler.

Mr. BAILEY. Will the Senator from Massachusetts be good enough to tell the Senate whether the President admits that he sent ex-Senator Chandler to see the Senator from South Carolina?

Mr. LODGE. I did not cross-question him in regard to the statement made by the Senator from South Carolina, for I had not heard the statement myself, and the President, of course, has not heard or read one word of it. I imagine tomorrow, when he has the opportunity of reading the statement in full, he will make reply to it in such manner as to satisfy the utmost curiosity of the Senator from Texas.

Mr. BAILEY. It was not a matter of curiosity, Mr. President. If it were true that the President of the United States had not requested, through the ex-Senator from New Hampshire, his conferences with the Senator from South Carolina, that also ought to go into the RECORD, because I take it that the Senator from South Carolina is just as willing as the Senator from Massachusetts for the President of the United States to have the full benefit of the truth.

But I think it is also important for those of us on this side, who had no communication with the President and who had no conversation with Mr. Chandler, to know whether an ex-member of this body has improperly assumed an authority to speak for the President.

Mr. LODGE. It must be perfectly obvious to the Senator from Texas from what I have read that the President admits fully, that he does not seek in any way to deny, that he had a conversation with Senator Chandler.

Mr. BAILEY. On the subject?

Mr. LODGE. On the subject, as he has had with dozens and scores of other men, with Senators of both parties in this Chamber. More than that, of course, can not be said, as the whole statement is not before the President.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Iowa [Mr. ALLISON].

The amendment was agreed to.

Mr. McCUMBER. I move to strike out the word "regularly,"

where it appears on page 16, line 19, and to insert in lieu thereof the word "lawfully."

The VICE-PRESIDENT. The amendment of the Senator from North Dakota will be stated.

The SECRETARY. On page 16, line 19, strike out the word "regularly" and insert "lawfully;" so that it will read:

If, upon such hearing as the court may determine to be necessary, it appears that the order was lawfully made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience.

Mr. McCUMBER. Is there any objection to the amendment?

Mr. ALLISON and Mr. FRYE. No.

The amendment was agreed to.

Mr. CULBERSON. On page 13 of the printed bill, of date February 26, line 18, I move to amend by striking out the word "two" and inserting the word "three."

The VICE-PRESIDENT. The amendment proposed by the Senator from Texas will be stated by the Secretary.

The SECRETARY. On page 13, line 18, before the word "years," it is proposed to strike out the word "two" and insert "three;" so as to read:

All complaints for the recovery of damages shall be filed with the Commission within three years from the time the cause of action accrues, and not after.

Mr. CULBERSON. Mr. President, just a word in explanation. This paragraph is a mere statute of limitations, as I take it, and yesterday I received a telegram from the attorney of the Cattlemen's Association, which reads as follows, after the date and direction:

Cattlemen's claims for reparation have been accruing; three years' limitation clause of Hepburn bill possibly bars prior to two years; insert amendment allowing one year to file accrued claims before Commission.

S. H. COWAN.

It seems to me that that statement is sufficient reason for the Senate to adopt this mere verbal amendment extending the time one year in which accrued claims may be presented.

Mr. DOLLIVER. I should like to hear the amendment again.

The Secretary again stated the amendment.

Mr. DOLLIVER. That section refers to claims for damages on account of overcharges. I think we ought to be careful not to get it in such shape that a claimant may allow his claims to accumulate for a long time before he even complains about them, and then by these actions recover a large accumulation of damages. I think the matter could be better got at by leaving the limitation two years and adding "in case of claims already accrued, an additional year." It certainly would not be a good thing to allow a man to wait three years before even complaining about an overcharge, and then be entitled to recover for the entire three years.

Mr. CULBERSON. I think the suggestion of the Senator simply accomplishes the matter in another way. I have no objection to it. I move, therefore, at the suggestion of the Senator from Iowa, to add, after the word "after," in line 22, page 13, the words:

Provided, That accrued claims may be presented within one year.

That means one year after the passage of this act.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Texas.

The amendment was agreed to.

The VICE-PRESIDENT. The other amendment, the Chair presumes, is withdrawn.

Mr. CULBERSON. It is.

Mr. McCUMBER. I desire to call the attention of the Senate to three words in this bill on page 10, line 19, where the Commission is to "determine and prescribe" what will, in its judgment, be the just and reasonable rate or charges. I understand there has been a practical agreement not to interfere with those words, and I am not going to move to strike them out, but I want to say now that I consider that by leaving those words in it you are crowding very close to the unconstitutional limit. It is extremely questionable in my mind whether with those words left in the bill it does not substitute the judgment of the Commission for the judgment of Congress as to what shall be a just and reasonable rate.

Mr. HALE. Mr. President——

The VICE-PRESIDENT. Does the Senator from North Dakota yield to the Senator from Maine?

Mr. McCUMBER. Certainly.

Mr. HALE. I want to say, Mr. President, that I agree entirely with the Senator who has just spoken. In my judgment the retention of these words may be found to work a most profound mischief to the whole legislation. I do not believe it is worth while to run that risk by insisting upon the insertion of these words; but I shall equally with the Senator make no further opposition except to enter my protest and my note of warning, little as it may be worth, as to what may result from retaining these words in the measure.

Mr. BAILEY. May I ask the Senator——

Mr. FRYE. Mr. President, there is no amendment pending, and discussion is entirely out of order.

The VICE-PRESIDENT. The Chair agrees with the Senator from Maine. There is no pending amendment.

Mr. SIMMONS. Mr. President——

Mr. DANIEL. I have an amendment to offer. Will the Senator from North Carolina allow me to offer an amendment agreed to by the Senator from Iowa [Mr. ALLISON] and gentlemen on the other side?

The VICE-PRESIDENT. The Senator from Virginia proposes an amendment.

Mr. DANIEL. I now reoffer the amendment which I withdrew at the request of the Senator from Iowa [Mr. ALLISON], after adding, to his satisfaction and to that of the Senator from Kansas [Mr. LONG], who represents him, a few words. I will now read the whole amendment as I offer it with the addition:

In any such suit the bill or other complaint shall be accompanied by a full copy of the record made on the hearing of the case before the Interstate Commerce Commission and of all the testimony therein, which shall be certified and furnished by the Commission to the complainant on demand.

The only addition is to require that the Commission shall furnish a certified copy to the complainant on demand.

Mr. FRYE. Let it be read.

The VICE-PRESIDENT. The Chair will inquire where the amendment is to come in?

Mr. DANIEL. After line 13, on page 9.

The VICE-PRESIDENT. In what print?

Mr. DANIEL. At the end of the amendment as to court review submitted by the Senator from Iowa [Mr. ALLISON].

The SECRETARY. After the word "courts," in the amendment agreed to, which was offered by the Senator from Iowa [Mr. ALLISON], insert:

In any such suit the bill or other complaint shall be accompanied by a full copy of the record made on the hearing of the case before the Interstate Commerce Commission and of all the testimony therein, which shall be certified and furnished by the Commission to the complainant on demand.

The amendment was agreed to.

Mr. SIMMONS. When the Senator from North Dakota [Mr. McCUMBER] rose a few minutes ago I was on my feet seeking the recognition of the Chair for the purpose of offering an amendment.

Mr. LODGE. I rise to a question of order. What amendment is now pending?

The VICE-PRESIDENT. There is no amendment now pending.

Mr. FORAKER. I ask that the amendment just adopted may be read.

Mr. SIMMONS. My purpose is to offer an amendment.

The VICE-PRESIDENT. The Secretary will read the amendment just adopted, if the Senator from North Carolina will suspend for a moment.

The SECRETARY. After the word "courts," in the amendment agreed to, insert the following:

In any such suit the bill or other complaint shall be accompanied by a full copy of the record made on the hearing of the case before the Interstate Commerce Commission and of all the testimony therein, which shall be certified and furnished by the Commission to the complainant on demand.

The VICE-PRESIDENT. The Senator from North Carolina is entitled to the floor.

Mr. SIMMONS. Mr. President, I have attempted to state——

Mr. FORAKER. Mr. President——

The VICE-PRESIDENT. Does the Senator from North Carolina yield to the Senator from Ohio?

Mr. FORAKER. Is the Senator speaking to the amendment which was just read?

Mr. SIMMONS. That amendment has already been passed. I rose for the purpose of offering another amendment.

Mr. FORAKER. I want to say a word about the amendment just read. It was announced passed before I could get the attention of the Chair. Before we get away from it, I should like to call attention to the fact that it is not, I think, properly drawn.

Mr. SIMMONS. I will yield to the Senator for that purpose, without surrendering the floor.

The VICE-PRESIDENT. The Senator from North Carolina yields to the Senator from Ohio.

Mr. FORAKER. I am very much obliged to the Senator.

As I understand the amendment as it was read a moment ago, it requires that the complete record made before the Interstate Commerce Commission shall be attached to the bill of complaint, or shall be filed with it. It seems to me that it

would be better to adopt the usual provision in that respect in all the States—I have examined a number of them—that after the suit has been commenced, upon notice to the Commission, the Commission shall furnish this complete report by sending it to the court, where the court shall give to it such consideration as the court may deem it entitled to. It does not seem to me that it is proper to require that it shall be certified and attached to the bill of complaint and be filed with it at the very beginning of the suit.

I wish to add, however, that in whatever form it may be adopted, if we are going to put in the bill any statement as to what evidence shall be heard by the court, for fear that the expression of one class would exclude all other classes, I want to add if this amendment is adhered to——

The VICE-PRESIDENT. Does the Senator from Ohio move that the vote by which the amendment was adopted be reconsidered?

Mr. GALLINGER (to Mr. FORAKER). Ask unanimous consent.

Mr. FORAKER. I ask that it be considered as open.

The VICE-PRESIDENT. Is there objection to the request made by the Senator from Ohio that the vote by which the amendment was agreed to be reconsidered? There is no objection, and the amendment proposed by the Senator from Virginia [Mr. DANIEL] is before the Senate.

Mr. FORAKER. I ask that the following may be added to it.

The VICE-PRESIDENT. The Senator from Ohio proposes an amendment to the amendment submitted by the Senator from Virginia.

Mr. FORAKER. I propose to add:

Any party to such action may introduce original evidence in addition to the transcript of the evidence offered to said Commission.

I read those words from the provision for a court review adopted by the Ohio legislature in the statute recently enacted. I do it only because I think if we mention any class of evidence it might be held that that was intended to exclude the consideration of any other evidence, and I do not suppose any Senator has offered it with any such idea as that. When we give the court jurisdiction to hear and determine as to the order, whether or not it shall be enforced, annulled, or modified, the court has complete control, I presume, of the trial and can hear whatever evidence it may deem competent. But if we recite any class of evidence we ought to make it clear that any kind of evidence will be received.

The VICE-PRESIDENT. The Secretary will state the amendment to the amendment.

The SECRETARY. It is proposed to add at the end of the amendment proposed by the Senator from Virginia [Mr. DANIEL] the following words:

Any party to such action may introduce original evidence in addition to the transcript of the evidence offered to the Commission.

Mr. NELSON. I should like to hear the whole amendment now read.

The VICE-PRESIDENT. At the request of the Senator from Minnesota the amendment of the Senator from Virginia as proposed to be amended by the amendment of the Senator from Ohio will be read.

The Secretary read as follows:

In any such suit the bill or other complaint shall be accompanied by a full copy of the record made on the hearing of the case before the Interstate Commerce Commission, and all of the testimony therein, which shall be certified and furnished by the Commission to the complainant on demand. Any party to such action may introduce original evidence in addition to the transcript of the evidence offered to the Commission.

Mr. CLARKE of Arkansas. I wish to offer an amendment to the amendment offered by the Senator from Ohio.

Mr. KEAN. That is not in order, being an amendment in the third degree.

Mr. DANIEL. Mr. President——

Mr. CLARKE of Arkansas. I yield to the Senator from Virginia.

Mr. DANIEL. I had in my hand and intended to offer, if the Senator from Ohio had not done so, an amendment in the nature of an amendment to the like effect, but with a proviso thereto which I hope it may be agreeable to his mind to accept. I would accept his amendment and suggest this proviso, which I ask the Secretary to take down, as I have written it in pencil on this paper:

Provided it is such as could not have been obtained by due diligence while the case was before the Interstate Commerce Commission.

A word on that, Mr. President, and then I will take my seat.

The great difficulty is in getting the full case made up as speedily as possible. It is recognized that the suit which will be brought by the carrier is an original suit, but it is desired to preserve the testimony already taken. In the event that the party may have discovered other testimony which he had no opportunity to put in before the Interstate Commerce Commission this amendment saves him from surprise and from any possible disparagement. So all the evidence he could possibly produce he will have the full opportunity to present in the hearing of his cause, but he is not to trifle with the matter while it is before the Interstate Commerce Commission and compel a rethrashing of the same old straw.

Mr. FORAKER. If the Senator will allow me to interrupt him, I will state the trouble about accepting his amendment, and I would accept it without any hesitation except for this trouble. The proceeding before the Interstate Commerce Commission is to be hereafter as it has always been heretofore—irregular; that is to say, there are no formal pleadings filed; no issue is arrived at. The whole hearing is upon a complaint and in such manner as the Commission may direct. While it is true that after the Commission has made orders in its experience heretofore and the same case has been taken to the court much evidence has been introduced in the court that was not introduced before the Commission, that has not been as a rule through any unwillingness on the part of the carrier or other party to produce it there, but solely because no issue had been made up that advised counsel what testimony should be presented; and not until the Commission has made its order and announced its opinion, in many instances of which I happen to have knowledge, have counsel been advised what really was the competent testimony that should be produced. Then when it went to the court where issues were made up by pleadings they proceeded in accordance with the rules governing the admission of testimony.

If we were to adopt the proviso of the Senator from Virginia, it might do a great injustice. I think it is better to leave it with the court, and I hope the Senator will accept my amendment without any modification.

[Mr. CLARKE of Arkansas addressed the Senate. See Appendix.]

The VICE-PRESIDENT. The Secretary will report the proposed amendment of the Senator from Virginia.

Mr. KEAN. Do I understand that the Senator from Virginia has accepted the amendment of the Senator from Ohio?

The VICE-PRESIDENT. The Chair will make the inquiry after the amendment presented by the Senator from Virginia has been read.

The SECRETARY. After the word "courts," the last word in the amendment agreed to, which was offered by the Senator from Iowa, insert:

In any such suit the bill or other complaint shall be accompanied by a full copy of the record made on the hearing of the case before the Interstate Commerce Commission and of all the testimony therein, which shall be certified and furnished by the Commission to the complainant on demand.

The VICE-PRESIDENT. To that the Senator from Ohio offered an amendment, which will be stated.

The Secretary read as follows:

Any party to such action may introduce original evidence in addition to the transcript of the evidence furnished by the Commission.

Mr. FORAKER. Does the Senator from Virginia accept that?

Mr. DANIEL. I will accept it, but move to add to it——

Mr. DOLLIVER. Would it be disagreeable to the Senator from Ohio to add that this new evidence shall be evidence which the complainant could not, by the use of reasonable diligence, have presented to the Commission?

Mr. DANIEL. If in order, I will offer the amendment I suggested to the amendment.

The VICE-PRESIDENT. The Chair will state that the Senator from Virginia, having accepted the amendment of the Senator from Ohio, a further amendment is in order now.

Mr. DANIEL. Mr. President, I am very glad to find that my own mind is working so nearly in accord with those of two such able lawyers as the Senator from Arkansas and the Senator from Ohio, and I wish to be in as accommodating a spirit as I feel the full and perfect justice of this case may require. The difficulty has been in getting a full case made before the Interstate Commerce Commission. The result has been that the public justice has been disparaged and all the parties to the case have been disappointed by a thin and imperfect presentation of a case which is afterwards fully presented.

A proper construction and a plain construction of the words which I would now append, it seems to me, is broad enough to perfect the matter so that nobody can be surprised or injured—that is to say, by limiting the new evidence to such as could not have been obtained by due diligence while the case was

before the Interstate Commerce Commission. If the Senator from Ohio will suggest any more elastic words to be added to "due diligence" which would the better reach any new aspect of the case, I would be glad to accept that also, for I do not intend to cut anybody off from a presentation of the proper defense of the case to the court when it is heard.

Mr. FORAKER. I think the best way to do is to say nothing at all about the evidence that shall be heard by the court.

Mr. DANIEL. If that were the case——

Mr. FORAKER. If the Senator will allow me——

Mr. DANIEL. If the Senator will just let me answer that point, I am afraid if that be the case the court would treat the matter entirely de novo, and would not get the benefit of the testimony, and would have to do it all over again. That is the reason why we want some limitations.

Mr. FORAKER. Mr. President——

Mr. RAYNER. May I interrupt the Senator? My own judgment is that if you adopt that amendment you kill this bill.

Mr. DANIEL. This amendment?

Mr. RAYNER. Yes, sir; if you adopt that amendment you do not give the parties any due process of law. You can not confine it to testimony taken before the Commission. Everyone when he came into court would have a perfect right to take whatever testimony he wants, without any regard to any testimony taken before the Commission. Due process of law under the Constitution gives them that right, and you can not say they have had due process of law before an administrative body. This is not an appeal. It is not a review, and it is not a certiorari, as the Senator from Wisconsin [Mr. SPOONER] suggests. It is an original proposition, and you must give them an unlimited right to produce whatever witnesses or testimony they want. If you do not, you interfere with the constitutional right of due process of law. I call upon the Senate not to adopt that amendment, unless you want to kill the bill, because that is the vital point.

Mr. FORAKER. I have said all that the Senator from Maryland has just now so well said.

Mr. RAYNER. I did not hear you.

Mr. FORAKER. That was the very point of my interruption of the Senator from Virginia.

Mr. RAYNER. I was in the gallery.

Mr. FORAKER. I will say to him that I do not think we ought to say anything about what evidence should be heard, but leave that to the court. But if we say anything at all as to what testimony shall be heard, we must go further and say something that would save it from the objection made so well by the Senator from Maryland. I suggest that we might provide for "any original evidence that may be competent."

Mr. RAYNER. I will say to the Senator from Ohio that I doubt very much whether you can make this testimony prima facie evidence.

Mr. FORAKER. I am not trying to make it prima facie.

Mr. RAYNER. It has been made prima facie evidence. But if you go a step further and preclude any party from giving any testimony in court in reference to his case, you deprive him of his constitutional right. It runs through the whole bill, in my humble judgment, and defeats the bill, for it is the vital part of it.

Mr. DANIEL. If the Senator from Ohio will permit me—or I will wait until he gets through.

Mr. FORAKER. I was starting in to answer the Senator's inquiry when the Senator from Maryland interrupted me. I was about to say that the words "due diligence," employed by the Senator from Virginia—"evidence which the party might by due diligence have secured"—are not broad enough, because the carrier might by due diligence get a dozen witnesses who were immediately about it, whose testimony he had no advice he would have any need of, because there was no issue, and for that reason he did not get them. A man writes a letter to the Commission and the Commission immediately proceeds to hear a complaint. No definite charge is made in many of these cases; there is no answer filed; there is no issue joined, and therefore there is no advice to the party litigant as to what testimony will be received in many of the cases.

Mr. DANIEL. I would add after the words of the amendment of the Senator from Ohio "admitting new and original evidence." I ask that that sentence may be read to me that I may make these words fit in with it.

The Secretary read as follows:

Any party to such action may introduce original evidence in addition to the transcript of the evidence furnished by the Commission.

Mr. RAYNER. I should like to ask the Senator from Virginia a question.

The VICE-PRESIDENT. Does the Senator from Virginia yield to the Senator from Maryland?

Mr. DANIEL. If the Senator will kindly yield a moment, I am trying to frame words to fit in the amendment.

Mr. RAYNER. I do not think you can frame any words that will fit, and I was going to ask——

Mr. DANIEL. I can not be interrupted every moment and do it. I will be glad to yield to the Senator then.

Mr. RAYNER. All right.

Mr. DANIEL. I think this is it, Mr. President:

Provided it is such as could not have been obtained by due diligence while the case was before the Interstate Commerce Commission or is such as the court may deem essential to the justice of the case.

Mr. FORAKER. I suggest that it read "unless it be such as the court may deem essential."

Mr. DANIEL. Very well; that is better, I think. I want, while I am on my feet, to answer the new objection which has come from the Senator from Maryland [Mr. RAYNER].

Mr. RAYNER. Let me state it——

Mr. DANIEL. If the Senator from Ohio is through——

Mr. FORAKER. I am through if the Senator has accepted the language which I have suggested.

Mr. DANIEL. Very well.

We have had the suggestion made for the first time, Mr. President, by the Senator from Maryland that, if we make the evidence solemnly taken before the Interstate Commerce Commission prima facie so far as it goes, we are denying to the litigants due process of law, this being a case in which they are entitled to juridical process.

I take issue with the Senator from Maryland on that subject, and confidently claim that the case before the court, when it reaches there with a solemn record made under the inspection and direction of officers of high standing of this Government, taken under oath, is a solemn procedure, and that it is perfectly legitimate to this body, and that it is usual in such cases, to declare the record to be at least prima facie correct and to import what it seems. The only question that has ever been raised and debated, so far as I know, is as to making that record conclusive. We could make it conclusive, not simply prima facie, but for the fact that it is considered that the courts have the right to look into it and see that the party has not been injured in the ways defended and protected by our Constitution. If the Senator from Maryland will read again the case of the San Diego Water Company, where the evidence was taken in a much looser fashion than it is required to be taken here, and will note the emphatic opinion of the Supreme Court in passing upon it, that it was taken with due notice and that the rates were properly fixed under it, I think his mind will be disposed to modify the opinion which he has to-day expressed; and if these words of amendment, such as seem now to meet and comport with the judgment of the Senator from Ohio [Mr. FORAKER], are added, the most scrupulous care of the rights of everybody will have been consummated in provisions which give them a perfect remedy—a remedy, in the first instance, to be represented by their attorneys, to have their witnesses heard, to have oaths applied, and to defend their testimony by all the adminicle of jurisprudence; then to have it certified, and then when the case comes before a court, to have it inspected and to allow any additional testimony which could not have been gotten by due diligence before; and then, furthermore—and here is where the Senator's suggestion of lack of due process is fully met and completely defeated—any other evidence which the court may deem essential to the justness of the case, and he may add, if he pleases, "due process of law."

It is simply, Mr. President, to put the hands of Congress on this case and mold it by Congress so as to prevent delay, and the wit of man can not conceive of a rounder or a more complete remedy than the carrier or any other party will thus possess.

Mr. NELSON. Mr. President, the proposition of the Senator from Virginia [Mr. DANIEL] is based upon a false assumption. It is based upon the theory that transferring the consideration of a rate case from the Interstate Commerce Commission is in the nature of an appeal. It is nothing of the kind. When the case gets into the circuit court, it is an original suit, commenced there in the first instance. When such a suit is commenced in the circuit court of the United States, there are only two ways in which testimony can be taken. One is by oral testimony and the other is by deposition.

To my mind, the Senator from Virginia goes very far in his amendment. He goes to the verge of unconstitutionality by declaring that whatever testimony is taken before the Interstate Commerce Commission shall be deemed prima facie evidence in the circuit court. It is possible that that may be good; but when he goes a step further and undertakes in any way to limit

that court as to what testimony they shall use or not use, and as to what evidence a party to a suit shall use or not use, he clearly invades constitutional rights, and to that extent the provision would be a nullity.

I trust that such an amendment as the Senator from Virginia has suggested will not be incorporated in the bill; at all events, not the last amendment suggested by him. I trust the Senator will omit the latter part of his amendment. I can vote for the first part of it, making the testimony taken before the Interstate Commerce Commission prima facie evidence; but when he undertakes to limit the power of the circuit court as to the testimony which shall be taken and used in a case being tried in that court, he goes further than he is entitled to go by law.

[Mr. CLARKE of Arkansas addressed the Senate. See Appendix.]

Mr. HALE. Unless some Senator is prepared to move to adjourn, I move to lay the amendment on the table.

Mr. FULTON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Maine withdraw his motion?

Mr. HALE. For the time being.

The VICE-PRESIDENT. The Senator from Oregon is recognized.

Mr. FULTON. I do not intend——

Mr. TILLMAN. Will the Senator yield to me to try to get an agreement?

Mr. FULTON. I am not going to speak over three minutes, and then I will yield.

I do not intend to take up any time in discussing this question. I simply want to say that I am very clearly of the opinion, and I have been, that the carrier should be confined to the testimony taken before the Interstate Commerce Commission, unless it can be shown that by the exercise of due diligence that testimoney could not have been presented at the hearing.

I wish to submit that the contention that this would not afford them due process of law can not have any sound foundation. They have notice in advance that if they wish to offer further testimony when they get into court they must produce that testimony before the Commission. Will any Senator who is contending that that would deny them due process of law tell me that the legislative body might not require a party proposing to go into court to take his testimony by way of depositions or otherwise in advance, except in a case where he is entitled to a trial by jury, and that by such a requirement he would be denied due process of law?

Mr. President, due process of law means, so far as judicial investigation is concerned, that the party shall have an opportunity to submit his case and the evidence to the court. He may be required to take that evidence in advance, but that is not denying him due process of law. So I submit that the parties should be required to produce their testimony before the Interstate Commerce Commission, unless they can show some reason for not having done so.

Mr. TILLMAN. Mr. President, I move that when the Senate adjourn to-night it be to meet at 10 o'clock on Monday morning.

The VICE-PRESIDENT. The Senator from South Carolina moves that when the Senate adjourns to-night it be to meet at 10 o'clock on Monday morning. The question is on that motion.

Mr. HALE. Mr. President——

Mr. BACON. I hope the Senator will make it 11 o'clock.

Mr. TILLMAN. Is the motion carried, Mr. President?

Mr. HALE. The motion is not carried, because it is not understood. Nobody knew what was going on.

Mr. TILLMAN. I will restate it. I move that when the Senate adjourns to-day it be to meet at 10 o'clock on Monday next.

Mr. HALE. Does the Senator propose to follow that up?

Mr. TILLMAN. I propose to follow it up, if the Senate will put that through, by asking for unanimous consent to vote before we adjourn on Monday night.

Mr. HALE. The Senator will not get that consent, and can not get it. Some of us have not taken twenty minutes of the whole time. There are provisions in this bill that are of most vital importance. Section 8, which deals with the construction of the Commission, is a section that I do not propose to be shut out from discussing by any agreement which will call upon us to vote finally before that section is reached. I am one of those who believe that too much time has been spent in looking at the other end—the judicial end—of this question.

I want a great Commission; I want to dignify it; I want to make it of such importance and to pay it so much, that in every circuit where a member is appointed he shall be taken from that circuit, and shall be the first man in that circuit for this service. When that is done, half of the trouble about this whole matter will be ended, and the deliberations and the decisions of the Commission will carry weight as they have not heretofore. I say this without meaning to reflect upon the present Commission; but, I repeat, that too much time has been given here to the other end of the matter; and now we are asked to agree to a vote by which section 8 may not be reached at all, and the real thing in this bill—that is, to create a great Commission, whose decisions and mandates shall carry effect with them, so that any court will hesitate before it interferes with them—has not been touched on. Nobody has argued it, because we have not reached it. I shall not consent, Mr. President, that any agreement shall be made that may cut off the consideration of what to me is of primal and profound importance in this matter, and that is the tribunal that initiates and first tries these cases.

Mr. TILLMAN. Mr. President, I agree with the Senator from Maine that we have had a great deal of unnecessary talk and that we have devoted a great deal of time to trivial and unimportant matters and there have been repetition and duplication of speeches.

Mr. HALE. Certainly the Senator can not charge me with that.

Mr. TILLMAN. I am not charging anybody, but I am trying to speak what I believe to be the truth, and that is that we have had a great deal of unnecessary discussion on this bill on points that have been determined by the Senate over and over again.

Mr. HALE. We have had nearly three months of what is called "general debate," and we have had a little more than a week of debate under the fifteen-minute rule, which was intended to give an opportunity to all Senators for fifteen-minute speeches. The time of the Senate under the fifteen-minute rule has been taken up by the half dozen Senators who did all the talking in the general debate.

Mr. TILLMAN. I can not help that. I am merely stating what I believe to be a fact.

Mr. HALE. I will not rest passively under the imputation that there has been here a disposition, shared in by the Senate generally, to postpone or delay this measure. I am not a miserable sinner in that regard. I have not repeated. But there are things in this bill that I propose to take hold of and adjust, and I will not make any agreement or consent to an agreement that will cut me off and other Senators who feel as I do. There are Senators here wanting to be heard who have not yet been able to get the floor and be recognized.

Mr. TILLMAN. I am the last man to try to cut off anybody from speaking who wants to speak on this bill. If the Senator from Maine can suggest a method by which we can reach a vote on the amendments. I hope he will do so. There are a hundred of them, or such matter. I do not know how many of them will appear still-born and never be offered. The way we are going on we will be here another month. If the Senator from Maine will agree, or if I can get the Senate to agree, or if he will make a suggestion from his long experience as to how we may make progress more rapidly and not have the appearance of dragooning the Senate, I should like him to do so.

Mr. HALE. I will tell the Senator. He and I have both seen ironbound agreements made which were carried out in accordance with their provisions, where many Senators have been shut out and important considerations have never been permitted to come before the body. Now, that is the result of agreeing upon a time for taking the last vote. I hope we may meet at 10 o'clock on Monday, and that before we adjourn we will have considered the things in this bill that are in the minds of Senators and ought to be considered. I will agree that so far as I am concerned I will not intrude by taking up any undue time of the Senate. But I am not willing now, at this stage, under the very conditions that the Senator has described, of scores of amendments having been piled up and not having been considered, to agree upon a time when the final vote shall be taken. On Monday I will help him to get through, if possible. I will say to the Senator——

Mr. TILLMAN. I want to ask the Senator, and I ask the Senate in connection with the Senator himself, whether or not, if I should undertake, as the Senator in charge of this bill, to assume the responsibility of asking the Senate to lay on the table amendments which to me seem trivial or repetitions, or a mere waste of time to discuss things which have been discussed and discussed and killed and killed and killed and killed, and yet we go on repeating, repeating, repeating, the Senator and the Senate will back me up?

Mr. HALE. The Senator need not ask me that question, because I am the only Senator who thus far has had the temerity to move to lay anything on the table.

Mr. TILLMAN. I have moved to lay a lot of amendments on the table, but the Senate did not sustain me.

Mr. HALE. I had forgotten that.

Mr. TILLMAN. Therefore I have become very chary and cautious and modest about repeating it.

Mr. HALE. It is my idea that before we get to the determination of this business, in order to clear away the wreckage, we will have to resort to the motion to lay on the table.

Mr. TILLMAN. Would the Senator call this book [exhibiting] a record? We have not gotten a third way through it. A great many amendments are pending here, and the egotism, if I may use the word, or vanity of the men who have offered them will cause them to feel compelled to offer them and to speak to them.

Mr. HALE. I mean the subjects that have already been considered and voted on, and yet Senators try to renew them. I call that wreckage. We can get rid of that.

Mr. TILLMAN. I was going to ask unanimous consent, but the Senator from Maine having notified me that he will not agree to any time being fixed, I will move that the Senate adjourn.

Mr. LODGE obtained the floor.

Mr. NELSON. I move to amend the motion——

Mr. LODGE. I thought I was recognized.

The VICE-PRESIDENT. The Senator from Massachusetts is entitled to the floor. Does he yield to the Senator from Minnesota?

Mr. LODGE. I want to say a word.

Mr. ALDRICH. Is this a debatable question, Mr. President?

The VICE-PRESIDENT. It is not. The debate is proceeding by unanimous consent.

Mr. LODGE. Very well; then I have nothing to say.

Mr. NELSON. I move to amend the motion of the Senator from South Carolina by changing it from 10 to 11 o'clock.

The VICE-PRESIDENT. The Senator from Minnesota moves to amend the motion of the Senator from South Carolina to the effect that when the Senate adjourns to-day it be to meet at 11 instead of 10 o'clock on Monday.

The amendment was agreed to.

The motion as amended was agreed to.

Mr. NELSON. A motion to lay on the table was made by the Senator from Maine.

Mr. DANIEL. The Senator withdrew his motion.

Mr. HALE. It is the understanding that the amendment of the Senator from Virginia shall go over until Monday.

Mr. FORAKER. I move that the Senate adjourn.

The motion was agreed to; and (at 5 o'clock and 52 minutes p. m.) the Senate adjourned until Monday, May 14, 1906, at 11 o'clock a. m.

SENATE.

MONDAY, *May 14, 1906.*

The Senate met at 11 o'clock a. m.

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of the proceedings of Saturday last, when, on request of Mr. KEAN, and by unanimous consent, the further reading was dispensed with.

The VICE-PRESIDENT. The Journal stands approved.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a memorial of Post J, Indiana Division, Travelers' Protective Association of America, of Evansville, Ind., remonstrating against the passage of the so-called "parcels-post bill;" which was referred to the Committee on Post-Offices and Post-Roads.

Mr. PLATT presented petitions of sundry citizens of New York City, Albany, and Yonkers, all in the State of New York, and of sundry citizens of Sidney, Nebr., praying for the enactment of legislation to remove the duty on denaturized alcohol; which were referred to the Committee on Finance.

Mr. NELSON. I present a memorial relating to the rate bill, which I ask may be read and lie on the table.

There being no objection, the memorial was read and ordered to lie on the table, as follows:

[Telegram.]

ST. PAUL, MINN., *May 12, 1906.*

Hon. KNUTE NELSON,
United States Senate, Washington, D. C.:

As you know, I am in full sympathy with the main features of the amendment proposed to the interstate-commerce act, but I desire to protest against the injustice of the proposed amendment imposing fine and imprisonment on officers and agents of railway companies for allowing rebates. Such penalties can never be inflicted upon presidents and high officials of 160,000 miles of railways of this country, who live in New York and do not deal directly with rates, while their demand for more revenue will induce some freight agent on a salary of three or four thousand dollars a year to grant a rebate. Make the penalty as high as you please against the railway company. This is the only way to reach the railway czars and grand dukes. The penalty of imprisonment was in existence for many years and only one man, a poor freight agent trying to support his family on a meager salary, was imprisoned.

A. B. STICKNEY.

Mr. BURNHAM presented a memorial of the New England Hardware Dealers' Association, remonstrating against the passage of the so-called "parcels-post" bill; which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of the national committee on legislation, Patriotic Order Sons of America, of Odenton, Md., praying for the enactment of legislation to restrict immigration; which was referred to the Committee on Immigration.

He also presented a petition of the legislative committee, American Federation of Labor, of Washington, D. C., praying for the enactment of legislation for the relief of shipkeepers at Mare Island Navy-Yard, Cal.; which was referred to the Committee on Claims.

Mr. BURROWS presented a petition of the Unity Club, of Lansing, Mich., praying that an appropriation be made for a scientific investigation into the industrial conditions of women in the United States; which was referred to the Committee on Education and Labor.

He also presented petitions of sundry citizens of Jackson, Webberville, Springport, Hemlock, Big Rapids, Azalia, Lansing, Detroit, Cadillac, Sault Ste. Marie, Grand Rapids, McBrides, Gobleville, Alto, Manton, Mosherville, Ludington, Cedar Springs, Fremont, Hope, Almont, and Adrian, all in the State of Michigan, praying for the enactment of legislation to remove the duty on denaturized alcohol; which were referred to the Committee on Finance.

Mr. WARNER presented petitions of sundry citizens of St. Louis, Shawneetown, Raymore, Meadville, Adrian, Gregory, Fredericktown, Maryville, Galena, Arcola, Kansas City, Lebanon, Oregon, Green Ridge, Tarkio, Clinton, Linneus, Sedalia, Bluffton, Grand View, Carthage, and Nixa, all in the State of Missouri, and of sundy citizens of Pittsburg, Pa.; Chicago, Ill.; Somerville, Mass., and New Orleans, La., praying for the enactment of legislation to remove the duty on denaturized alcohol; which were referred to the Committee on Finance.

Mr. GAMBLE presented a memorial of the Black Hills District Medical Society, of Deadwood, S. Dak., remonstrating against the adoption of a certain amendment to the so-called "pure-food bill;" which was ordered to lie on the table.

He also presented memorials of sundry citizens of Sioux Falls, Yankton, Mitchell, and Woonsocket, all in the State of South Dakota, and of sundry citizens of Chicago, Ill., and St. Paul, Minn., remonstrating against the adoption of an amendment to the railroad rate bill to prohibit the issuance of passes to railroad employees and their families; which were ordered to lie on the table.

Mr. HEMENWAY presented petitions of the Versailles Republican, of Versailles; of the Young Business Men's Club, of Terre Haute; of the Studebaker Brothers' Manufacturing Company, of South Bend, and of Stony Point Grange, No. 1733, Patrons of Husbandry, of Stony Point, all in the State of Indiana, praying for the removal of the internal-revenue tax on denaturized alcohol; which were referred to the Committee on Finance.

He also presented a petition of Golden Rule Council, No. 5, Junior Order United American Mechanics, of Winslow, Ind., praying for the enactment of legislation to restrict immigration; which was referred to the Committee on Immigration.

He also presented a petition of the congregation of the Presbyterian Church of Kingston, Ind., and a petition of the congregation of the First Presbyterian Church of Hammond, Ind., praying for the adoption of an amendment to the Constitution to prohibit polygamy; which were referred to the Committee on the Judiciary.

He also presented a memorial of Crescent City Council, No. 14, United Commercial Travelers of America, of Evansville, Ind., and a memorial of Post J, Indiana Division Travelers' Protective Association, of Evansville, Ind., remonstrating against the passage of the so-called "parcels-post bill;" which were referred to the Committee on Post-Offices and Post-Roads.

He also presented petitions of sundry citizens of Evansville, Lafayette, Linton, Muncie, Jonesboro, Bristol, Logansport, Wingate, Ashley, Bicknell, Walkerton, Madison, Elwood, Waveland, Pittsboro, Hartford, Shelbyville, St. Paul, Rockport, Noblesville, and Dale, all in the State of Indiana, praying for the adoption of an amendment to the postal laws relating to news-